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THE
L A W S
RELATING TO
T H E P O O R.

INCLUDING THE COLLECTIONS¹ ORIGINALLY MADE BY

ED BOTT, Esq.

AND AFTERWARDS EDITED BY

F. CONST, Esq.

THE SIXTH EDITION:

IN WHICH

THE STATUTES AND CASES, TO MILITARY TERM 1827, ARE
ARRANGED UNDER THEIR RESPECTIVE HEADS;
AND THE WHOLE SYSTEM OF THE POOR-LAWS IS PLACED IN
A CLEAR AND PERSPICUOUS POINT OF VIEW.

By JOHN TIDD PRATT,
OF THE INNER TEMPLE, ESQ., BARRISTER AT LAW.

IN TWO VOLUMES.

VOL. I.

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CHARLES LORD COLCHESTER,

&c. &c. &c.

THE FOLLOWING WORK

IS,

WITH HIS LORDSHIP'S PERMISSION,

MOST RESPECTFULLY DEDICATED,

BY

HIS LORDSHIP'S MOST OBEDIENT

AND OBLIGED HUMBLE SERVANT,

JOHN TIDD PRATT.

*4. Elm Court, Temple,
1st October, 1827.*

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PREFACE

TO

THE SIXTH EDITION.

THE plan of this work is to insert, first, the several existing statutes on each subject of the Poor Laws, and then to add chronologically the cases that have been determined on the several branches of those statutes.

Since the publication of the last edition, (more than *twenty* years ago,) several statutes have been passed, and nearly *four hundred cases* decided on subjects connected with the Poor Laws. In order, however, to lessen the size of the work, the sections of the different statutes are merely referred to, although, in the *Digest*, the substance of each section is given, particularly as the third volume of Mr. Nolan's Treatise will be found to contain all the statutes at length.

The length of many of the cases was found inconvenient, and therefore in most of them, the arguments of counsel (except where the retaining of them was necessary to the better understanding of the determination of the Court,) have been expunged in the present edition. Other alterations, which it is hoped have considerably improved this edition of the work, have also been made.

The cases which have been expressly determined *not to be law* are omitted in the text, and made to accompany, by way of notes, the particular cases by which they were overruled.

But, as cases may still arise on statutes which no longer exist, the law is retained under their respective titles in the DIGEST.

Several of the cases have been transposed to places in the work to which they were thought more appropriate, than to those in which they were before inserted; and whenever any case is referred to in the argument of counsel, or in the judgment of the Court, the *placitum* where such case is to be found is given in the margin.

The DIGEST, which in this edition is placed at the beginning of the first volume, has been carefully examined with the cases, and corrected, the new matter inserted, and many new titles introduced. To render also this part of the work more clear and perspicuous, the divisions of the general titles, where the subject is long continued, are subjoined. The general titles of the former edition are preserved; but some of the divisions of the chapters have been changed, and the cases transposed accordingly; and the Editor has also added to each case the term and year in which it was decided, that it may be immediately ascertained whether the decision has taken place previous or subsequent to any particular statute.

These are the material alterations which have been made in the present edition, but others of a more minute kind have also taken place.

Much time and attention have been bestowed upon the work; and the Editor trusts, that such amendments have been made, as will render the work more worthy, than it was before, of the public attention.

Note.—This work was originally compiled by EDMUND BOTT, Esq. Barrister at law, a gentleman whose influence in the profession procured him the means of enriching the two editions which were published under his direction, by inserting in the first of them “a great number of extracts from

a manuscript collection of cases by the late John Ford, Esq." and in the second, "a variety of additional cases, taken from the manuscript of Mr. Serjeant Foster." The first series of these insertions are distinguished by the letters "MSS." and the second by "MSS. 2." The fifth edition was published under the direction of Francis Const, Esq. Barrister at law, the present chairman of the Middlesex Sessions, whose additional cases are distinguished by the words, "Editor's MSS." and have been left untouched by the present Editor.

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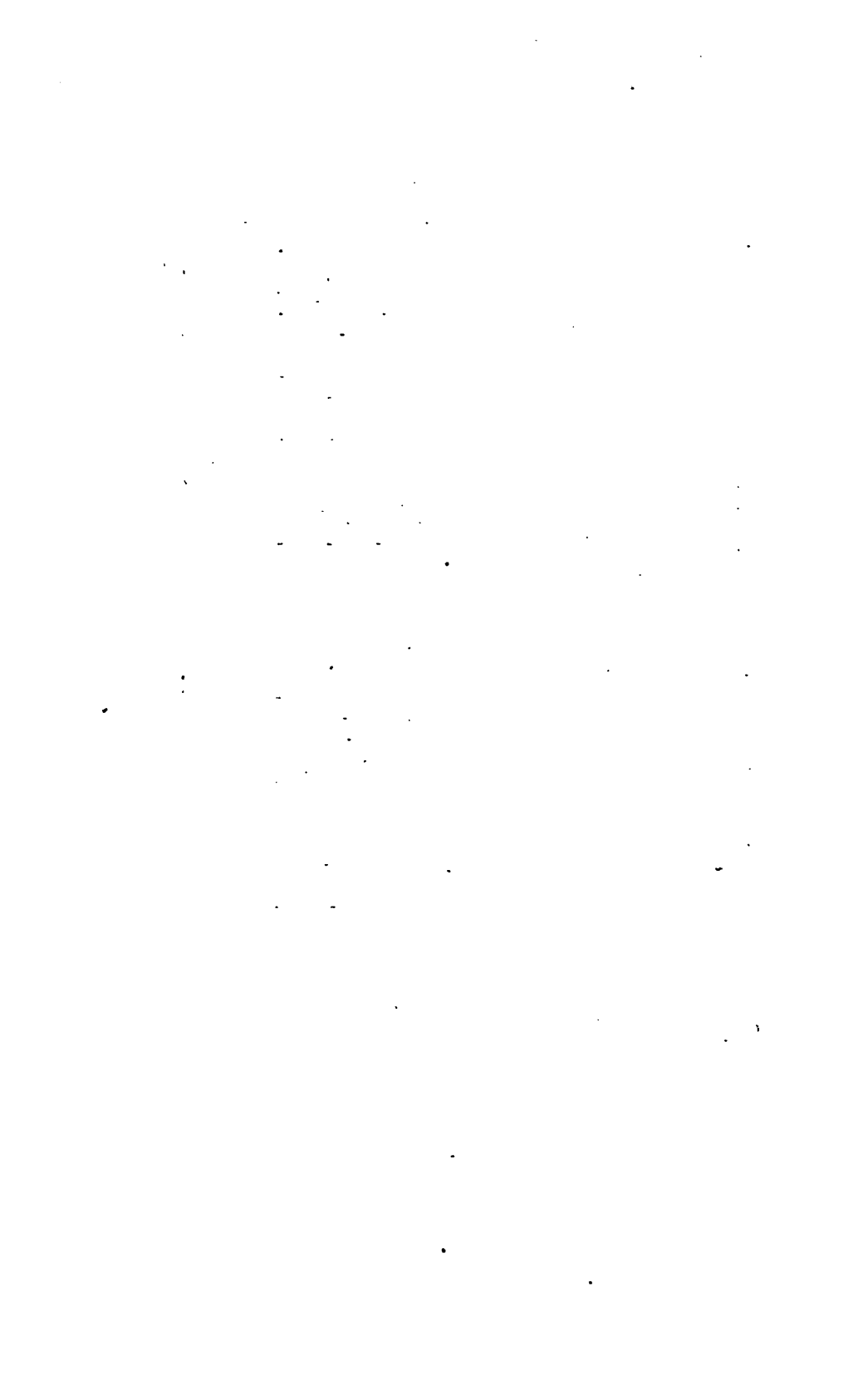
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A

D I G E S T

OF THE

LAWS RELATING TO THE POOR.

N. B. In the following DIGEST the numerals i. and ii. refer to the Volume; the figure or figures which follow, to the *placitum* or Number of the Case, in each respective Volume.

A.

ABILITY.

ABILITY to pay poor rates is not of itself a sufficient ground for making the rate; the ability must arise from some local visible property which the person rated has in the parish, *Rex v. Maddermarket*, i. 217. text.

ADJOURNMENT.

1. The Quarter Sessions may adjourn the hearing of an appeal against an order of removal, *Rex v. King's Langley*, ii. pl. 973.
2. A Session cannot be adjourned beyond the time mentioned in the 2 Hen. 5. c. 4. for holding another original Sessions, *Rex v. Grince*, ii. pl. 974.
3. The Court in making an order under an adjournment, must state when the original Session commenced, *Rex v. St. Michael, Ipswich*, ii. pl. 975.
4. For all orders made at an adjourned Sessions must show when the original Sessions commenced, *Rex v. Harrouby*, ii. pl. 976.
5. And therefore where on an order of removal, it was objected, that in the caption of the order, the sessions were said to be holden on such a day by *adjournment*, without stating when the *original sessions* was held, the order was quashed, *Rex v. Heptonstall*, ii. pl. 977.
6. So also where the court referred the question on an appeal against an order of removal to the consideration of the judge

of assize, but did not enter a continuance of the appeal by a proper adjournment of the session to a day on which the justices might have come to a determination after hearing the judges' opinion, it was held that the order of session quashing the order of removal was bad, *Rex v. Heddingham Sible*, ii. pl. 978.

7. The adjournment of an appeal against an order of removal may be made to an adjourned sessions, although the 13 & 14 Car. 2. c. 12. § 2. gives the appeal to the next quarter sessions, *Rex v. Stansfield*, ii. pl. 979.
8. But in adjournments an entry must be made of the continuance of the sessions, and therefore where a sessions was held on the 7th and adjourned to the 9th, where nothing was done, and no adjournment made, and another sessions held on the 11th, an order made at this last session was quashed, it being bad for want of an adjournment, *Rex v. Polstead*, ii. pl. 980.
9. And it requires the same number of justices to adjourn as it does to hold a session, *Rex v. Westington*, ii. pl. 981.
10. An adjournment should be entered if the justices are equally divided, *Bodwin v. Warligen*, ii. pl. 982.
11. For unless an adjournment be entered nothing can be done upon the subject at a future sessions, *Rex v. Justices of Westmoreland*, ii. pl. 985.

ADMINISTRATION.

See *Executors and Administrators*.

AGREEMENT.

1. An agreement to assign an apprentice must be stamped, *Res v. St. Paul's Bedford*, i. pl. 655.

ALDERMAN.

1. Aldermen of London are not liable to serve parish offices, *Res v. Abdy*, i. pl. 10.
2. But they may act as justices in the appointment of overseers, 43 *Eliz.* c. 2.

ALMS-HOUSE.

1. An *alms-house* wholly occupied by the objects of the charity, and from which no profits arise, is not rateable to the poor, *Res v. Waldo*, i. pl. 182.
2. Neither are the trustees of a quakers' meeting-house, of which no profit is made by the pews, &c. liable to be rated, *Res v. Woodward*, i. pl. 200.
3. Neither will the person who lives in such alms-house, for the purpose of superintending the poor maintained therein, be rateable as occupier, provided she has no other interest than her salary resulting from her situation, and no other residence therein than a bed-room, *Res v. Field*, i. pl. 201.
4. But if such master, mistress, or other superintendant, have a distinct habitation belonging to such charitable institution, although allotted by the founder of the charity free from all taxes, yet he is rateable to the poor as occupier of such habitation, *Res v. Catt*, i. pl. 205.
5. So also the objects of a charitable foundation in the actual occupation of the alms-houses and lands for their own benefit in the manner prescribed by the rules of the institution, and liable to be dismissed for any breach of such rules, are rateable in respect of such occupation, *Res v. Munday*, i. pl. 211.

APOTHECARIES.

1. By 6 & 7 Will. 3. c. 4. apothecaries within the city of London and seven miles thereof, being free of the apothecaries' company, and every other person in England, Wales, and Berwick, who has served as an apprentice to, and while they exercise the said art, are exempted from serving the office of overseer of the poor.

APPEAL.

- I. *The Statutes.*
- II. *Against Appointment of Overseers.*
- III. *Against Poor's Rate.*
- IV. *Against Overseers' Accounts.*
- V. *Against Vagrant Passes.*
- VI. *Against an Order of Relief.*

- VII. *Against an Order of Bastardy.*
- VIII. *Against an Order of Apprenticeship.*
- IX. *Against an Order of Removal.*
- X. *Against an Order of Suspension.*
- XI. *Effect of an Appeal.*

I.

The Statutes.

1. By 43 *Eliz.* c. 2. respecting the appointment of overseers; the assessment, levying, and distraining for the poor's rate: the rating parishes in aid; the sending of paupers to the workhouse; and the binding poor children apprentices; IT IS ENACTED, "that if any person shall find themselves grieved with any cess or tax or other act done by the churchwardens and other persons, or by the justices of the peace, that then the justices, at their general quarter sessions, shall take such order therein as to them shall be thought convenient."
2. But by 17 *G. 2.* c. 38. § 4. "if any person shall find himself aggrieved by any rate for the relief of the poor, or shall have any material objection to any person being put in or left out of such rate, or to the sum charged on any person therein, or shall have any material objection to the overseers' accounts, or any part thereof, or shall find himself aggrieved by any neglect, act, or thing done or omitted by the churchwardens and overseers of the poor, or by any of the justices of peace, such person, in any of the cases aforesaid, giving reasonable notice to the churchwardens or overseers, shall appeal to the next general or quarter sessions."

II.

Against Appointment of Overseers.

3. A person improperly appointed overseer must appeal to procure his discharge, *Res v. Great Marlow*, i. pl. 74.
4. But if the appointment be removed into the King's Bench by certiorari, the court will receive affidavits of the facts, and determine the legality or illegality of the appointment, *ibid.* i. pl. 74.
5. The right of appealing against an appointment of overseers cannot be taken away by removing the appointment before the next sessions after it is made, *Res v. Houlditch*, i. pl. 71.
6. But an order of justices appointing overseers under 43 *Eliz.* may be removed before the appeal is lodged, *Res v. Warwick*, i. pl. 69.
7. If an appointment be made by persons calling themselves "justices" who are not

- so, it is a nullity, and therefore the party appointed need not appeal, *Rex v. Towell*, i. pl. 72.
8. But if an appeal be made, stating that the appointment was made by such persons "*justices of the peace*," this is an admission of their jurisdiction, *ibid.* i. pl. 72.
9. The parishioners as well as the overseers appointed may appeal under the 43 Eliz. c. 2. § 6. *Rex v. Forrest*, i. pl. 73.
10. A *certiorari* lies to remove the order although no appeal has been made, *Rex v. Harman*, i. pl. 70.
11. And on *certiorari* brought, the facts of the case may be laid before the court by affidavit, *Rex v. Great Marlow*, i. pl. 74.
12. See also *Rex v. Stanley*, i. pl. 618.
23. And the party grieved must seek his relief by appeal, for if he do not, and the rate is erroneous, he cannot maintain trespass against the overseer for levying it, *Durrant v. Boys*, i. pl. 297.
25. Sed quare et vide, *Rex v. Newcomb*, i. pl. 268.
24. See also *Harper v. Carr*, i. pl. 271.
25. If an appeal be lodged under 43 Eliz. c. 2. and dismissed for informality, the party cannot have a second appeal, *Rex v. Justices of Yorkshire*, 3 T.R. 776.
26. And therefore an appeal against the rate must be lodged at the next sessions after the allowance of it, *Rex v. Atkins*, i. pl. 293.
27. The party objecting to a poor rate may appeal to the next sessions for which he is in time to give an effectual notice of appeal after the publication of the rate, and one intervening day between such publication and the next immediate quarter sessions is not sufficient time for the purpose. *Rex v. Justices of Sussex*, i. pl. 299.
28. Several parties having a joint grievance, such as the omission of persons in the rate who ought to be rated, may join in giving one notice of appeal to the parish officers, *Id. ibid.*
29. An appeal against a poor rate in London or Middlesex must be made, as in all other counties, to the next (i.e. next possible) general quarter sessions, though the stat. 17 G. 2. c. 58. § 4. in its terms gives the appeal to the next general or quarter sessions, and though in the two counties named there are four general as well as four general quarter sessions, *Rex v. Justices of London*, i. pl. 300.
30. If a person give notice of his intention to appeal, but do not enter it, the sessions cannot award costs to the other party under 17 G. 2. c. 58. *Rex v. Justices of Essex*, ii. pl. 1017.
31. For the determination of the appeal is a condition precedent to the power of the session to give costs; for the act says, "shall give the party for whom such appeal shall be determined, costs." *Id. ibid.*
32. By 43 Eliz. c. 2. § 8. the same power is given to corporation justices within their jurisdiction as is given to the county justices.
33. And therefore it was held, that an appeal from a poor rate might be made to a borough sessions, and that county sessions could not receive an appeal against a rate made in a corporation town which has justices of its own, *Rex v. Taunton*, i. pl. 283.
34. But by 17 G. 2. c. 58. § 5. If the corporation or franchise has not four justices of

III.

Against Poor's Rate.

13. By 41 G. 3. c. 23. § 4. "All notices of appeal against poor rates shall be in writing, signed by the person giving the same or by his attorney, and left at the abode of the overseers, specifying the particular grounds or causes of appeal, and no other cause or ground than what is specified, shall be inquired into."
14. By 41 G. 3. c. 23. § 6. Notices shall "also be given by the appellant to the other person or persons interested or concerned in the event of the appeal."
15. But by 41 G. 3. c. 23. § 5. The "appeal may, by consent of parties, be heard though no notice of appeal have been given."
16. It was formerly held, that only those persons who were actually damaged by the acts of the churchwardens, overseers, or justices, could appeal under the 43 Eliz. c. 2.
17. And that the appeal was not confined to the next quarter sessions, *Rex v. St. Giles*, i. pl. 280.
18. But might be brought at any sessions at any distance of time, *Rex v. St. Giles*, i. pl. 281.
19. But it is now determined, that in the case of poor's rate, any person, though not the party grieved, may appeal, and that the appeal must be to the next sessions, *Rex v. Canterbury*, i. pl. 286.
20. And it is now settled, that the appeal against a poor's rate must be in all cases to the next sessions; for the 17 G. 2. c. 58. has in this respect repealed 43 Eliz. c. 2. § 4. which left the appeal to any sessions, *Rex v. Coodo*, i. pl. 290.
21. And it is by the making of the rate that the party is grieved, *Rex v. Micklefield*, i. pl. 291.
22. And the party grieved must seek his relief by appeal, for if he do not, and the rate is erroneous, he cannot maintain trespass against the overseer for levying it, *Durrant v. Boys*, i. pl. 297.
23. Sed quare et vide, *Rex v. Newcomb*, i. pl. 268.
24. See also *Harper v. Carr*, i. pl. 271.
25. If an appeal be lodged under 43 Eliz. c. 2. and dismissed for informality, the party cannot have a second appeal, *Rex v. Justices of Yorkshire*, 3 T.R. 776.
26. And therefore an appeal against the rate must be lodged at the next sessions after the allowance of it, *Rex v. Atkins*, i. pl. 293.
27. The party objecting to a poor rate may appeal to the next sessions for which he is in time to give an effectual notice of appeal after the publication of the rate, and one intervening day between such publication and the next immediate quarter sessions is not sufficient time for the purpose. *Rex v. Justices of Sussex*, i. pl. 299.
28. Several parties having a joint grievance, such as the omission of persons in the rate who ought to be rated, may join in giving one notice of appeal to the parish officers, *Id. ibid.*
29. An appeal against a poor rate in London or Middlesex must be made, as in all other counties, to the next (i.e. next possible) general quarter sessions, though the stat. 17 G. 2. c. 58. § 4. in its terms gives the appeal to the next general or quarter sessions, and though in the two counties named there are four general as well as four general quarter sessions, *Rex v. Justices of London*, i. pl. 300.
30. If a person give notice of his intention to appeal, but do not enter it, the sessions cannot award costs to the other party under 17 G. 2. c. 58. *Rex v. Justices of Essex*, ii. pl. 1017.
31. For the determination of the appeal is a condition precedent to the power of the session to give costs; for the act says, "shall give the party for whom such appeal shall be determined, costs." *Id. ibid.*
32. By 43 Eliz. c. 2. § 8. the same power is given to corporation justices within their jurisdiction as is given to the county justices.
33. And therefore it was held, that an appeal from a poor rate might be made to a borough sessions, and that county sessions could not receive an appeal against a rate made in a corporation town which has justices of its own, *Rex v. Taunton*, i. pl. 283.
34. But by 17 G. 2. c. 58. § 5. If the corporation or franchise has not four justices of

the peace, the appeal may be to the next general or quarter sessions of the county.

IV.

Against Overseers' Accounts.

35. It was formerly held, that if overseers' accounts are passed before *one justice* according to 17 G. 2. c. 38. the appeal from them must be to the *next session*; but if before *two justices*, under 45 Eliz. c. 2. it may be to any session, *Res v. Justices of Berkshire*, i. pl. 327.
36. But it is settled, that the clause in 45 Eliz. c. 2. which gives the appeal generally to any session, is repealed by 17 G. 2. c. 38. and the appeal must now be in all cases to the next session, *Res v. Coode*, i. pl. 290.
37. An appeal cannot be made to the sessions against overseers' accounts, unless an order has been previously made by two justices, *Res v. Bartlet*, i. pl. 325.
38. Whether the appeal be on the 45 Eliz. c. 2. or 17 G. 5. c. 38. § 4. *Res v. Whitear*, i. pl. 326.
39. An appeal against overseers' accounts must be to the next general quarter sessions after the allowance of the accounts. The 17 G. 2. c. 38. § 4. is in this respect a repeal of the 45 Eliz. c. 2. § 6. *Res v. Justices of Worcester*, i. pl. 333.
40. By 41 G. 3. c. 25. § 4. all notices of appeal against overseers' accounts shall be in writing signed by the party or his attorney, and left at the overseers' abode, or at that of any two of them, specifying the grounds of appeal; and no other causes of appeal than those inserted in such notice shall be examined into.
41. See title "OVERSEERS."

V.

Against Vagrant Passes.

42. By 17 G. 2. c. 5. § 26. any person aggrieved by any act of any justice out of sessions in or concerning the execution of this act, may appeal to the next general or quarter sessions.
43. But an appeal does not lie to the quarter sessions from a *vagrant pass*; the only mode of relief is by an order of two justices, *Res v. Ringwoud*, ii. pl. 874.
44. An appeal does not lie generally by a *parish* against a *vagrant pass*; but whether it does in the case of a foreigner sent under a false examination is undecided, *Res v. Edgeware*, ii. pl. 875.

VI.

Against an Order of Relief.

45. By 18 G. 3. c. 19. § 5. if the overseer shall be aggrieved by any act of the constable or justices of the peace, or have any material objection to the account of such constable, &c., for monies expended in relieving the poor, he may appeal to the next sessions.
46. By 18 G. 3. c. 19. § 6. overseers of corporations where there are not four justices of peace, may appeal to the next general or quarter sessions of the county.
47. No appeal lies from an order of maintenance made by one justice; for by the 3 W. & M. c. 11. a single justice has, in this respect, a concurrent jurisdiction with the justices in sessions, *Res v. North Shields*, i. pl. 468.
48. By 43 G. 3. c. 47. § 26. appeal may be made to the next general or quarter sessions respecting the relief to be afforded to the families of persons serving in the militia.
49. An appeal does not lie to the quarter sessions against an order for relief, *Res v. Justices of Devon*, i. pl. 476.

VII.

Against an Order of Bastardy.

50. By 18 Eliz. c. 3. § 2. the mother or reputed father of a bastard child, upon notice of an order of bastardy made, shall, on default of performing the same, be committed to the common gaol, except he, she, or they, shall give security to perform the same, or else personally to appear at the next general sessions to be holden in that county where the order is made.
51. By 6 G. 2. c. 31. if the mother of a bastard child *swear* it to any person, the justice may issue his warrant to apprehend the *reputed father*, and commit him to the common gaol or house of correction, unless he shall give security to indemnify the parish, or shall enter into a recognizance to appear at the next general quarter sessions or general sessions of the peace, and abide by the determination there made.
52. By 13 G. 3. c. 82. § 7. for the regulation of bastard children born in lying-in hospitals, any person aggrieved by any order made according to the directions of the act may appeal to the quarter sessions of the county, riding, division, city, corporation, or place wherein he shall have suf-

- ferred such grievance, within four months after the fact done by which he shall think himself aggrieved, on giving fourteen days notice in writing, and within two days after entering into a recognizance with two sureties to try such appeal, &c.
55. The appeal from an order of bastardy must be to the next general sessions of that part of the county where the order was made, and not at the sessions in the county, *Rex v. Coyston*, i. pl. 596.
54. The next session shall be the session next after the time on which notice is given to the reputed father of his being so adjudged, *Rex v. Browne*, i. pl. 597.
55. And the appeal must be to the next general sessions after such notice, and not the next quarter sessions, *Rex v. Shaw*, i. pl. 598.
56. But if the reputed father appeal to the general quarter sessions, the court will not presume that a general sessions intervened between the time of making the original order and the appeal, *Rex v. Chichester*, i. pl. 599.
57. If the sessions, on appeal, make a new order of bastardy, the reputed father cannot appeal to the next subsequent general sessions, *Pridgeon's case*, i. pl. 606.
58. For against an original order of bastardy made at sessions no appeal whatsoever can be made, *Wood's case*, i. pl. 607.
59. Unless the sessions, proceeding on the statute 5 Car. 1. c. 4. take security from the reputed father to perform the order, or to appear at the next sessions. *Sed qu. Rex v. Weston*, i. pl. 608.
60. And an order of bastardy made by two justices, on being removed by *certiorari* into the King's Bench, may be quashed for errors on the face of it, although no appeal has been made to the sessions, *Rex v. Stanley*, i. pl. 618.
61. Upon an appeal to the sessions against an order of filiation, the respondents are to begin, by supporting their order, as in all other cases, *Rex v. Knill*, i. pl. 600.
- make such order between them as the equity of the case shall require.
64. And if the justice cannot settle the matter, he shall take bond of the master to appear at the next sessions.
65. And the sessions may, by order under hand and seal, discharge the apprentice from his indentures for a default in the master.
66. And if the default shall be found in the apprentice, may cause such due correction and punishment to be ministered unto him as shall be thought meet.
67. By 20 G. 2. c. 19. § 3. two justices of the peace where any master or mistress may dwell, upon the complaint of any apprentice put out by the parish with whom they have received no larger apprentice-fee than 5*l.*, touching any ill-usage, &c., may examine such complaint, and discharge such apprentice from his indentures.
68. By 20 G. 2. c. 19. § 4. it shall be lawful for such justices, upon complaint upon oath by any master or mistress against any such apprentice touching any misdemeanor, &c., to hear and determine the same, and to punish the offender, &c.
69. And by 20 G. 2. c. 19. § 5. if any person or persons shall think themselves aggrieved by any determination, order, or warrant of such justice or justices (save and except any order of commitment), they may appeal to the next general quarter sessions of the place where such order shall be made; where the same shall be finally heard and determined, and costs given not exceeding 40*s.*
70. By 6 G. 3. c. 25. any one justice of the peace where the master resides, may sue out his warrant to apprehend any apprentice who has absented himself from his master's service, and cause such apprentice to serve or make satisfaction for the time he was absent, and on refusal to give security so to do, may commit him for three months, provided the application be made within seven years after the expiration of the indentures; and if any person shall think himself aggrieved, he may appeal to the next general quarter sessions, giving notice to the justice, and entering into a recognizance in the manner therein described.
71. But this shall not extend to the stanaries of *Devon* and *Cornwall*.
72. By 33 G. 3. c. 51. two justices on complaint of an apprentice with whom not more than 10*l.* have been given, of his having been ill-used by his master, may fine such master in any sum not exceeding 40*s.*
73. The apprentice may appeal to the ses-

VIII.

Against Orders of Apprenticeship.

62. By the 43 Eliz. c. 2. justices are empowered to place out apprentices to the trades and in the manner therein described; but this statute gives no appeal.
63. But by 5 Eliz. c. 4. § 35. if any master shall misuse his apprentice, or the apprentice shall have just cause to complain, or the apprentice do not do his duty, such master or apprentice may respectively apply to a justice of the peace, who shall

- sions of the place in which he and his master live, although the binding and service be in a different city or county, *Rex v. Collingbourne*, i. pl. 680.
74. By 43 Eliz. c. 2. § 1. the churchwardens and overseers of a parish may, with the consent of two or more justices, take orders for putting out poor children apprentices.
75. By 8 & 9 W. 3. c. 30. § 5. those persons to whom poor children shall be bound apprentices pursuant to the 43 Eliz. c. 2. shall receive them and provide for them according to the terms of the indentures, upon pain of 10*l*.
76. By 8 & 9 W. 3. c. 30. § 6. if the person to whom any poor child shall be appointed to be bound an apprentice shall think himself aggrieved thereby, he may appeal to the next general or quarter sessions of the peace, and the order of the justices at such sessions shall be final, and conclude all the parties.
77. By 20 G. 3. c. 56. all persons to whom any children shall be appointed to be bound in pursuance of any act for the relief of the poor in any particular district of *England*, may appeal to the next general or quarter sessions.
78. By 32 G. 3. c. 57. persons grieved by the exercise of the authority given to the justices with respect to parish apprentices on the death of their masters may appeal to the general quarter sessions.
79. An appeal will not lie against a parish indenture after the master has executed the counterpart of it, for he cannot contradict his own deed, *Rex v. Saltern*, i. pl. 717.
80. By 2 & 3 Anne, c. 6. § 12. two or more justices of peace may determine disputes between masters and apprentices in the *sea service*, and make such orders therein as now they are enabled by law to do in other cases between masters and apprentices; but this act does not expressly give any appeal.
81. By 7 Jac. 1. c. 3. § 7. persons aggrieved by any of the parties appointed and trusted by this act to bind out apprentices under *public charities*, may petition the lord chancellor, who is empowered to appoint commissioners to examine the complaint; and if any person or persons shall find himself grieved by any thing done by the said commissioners, then, upon complaint made in the court of chancery, the lord chancellor shall make a decree therein.
82. By 28 G. 3. c. 48. § 16. for placing out poor boys apprentices to *chimney-sweepers*, if any person shall think himself aggrieved

by any thing done by any justice or justices of the peace in pursuance of this act, such person may appeal to the next general or quarter sessions of the place wherein the cause of such complaint shall arise, having first entered into a recognizance with sufficient sureties to abide by the order made therein, and also giving notice in writing to the justices of his intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint shall have arisen.

IX.

Against Orders of Removal.

83. By 13 & 14 Car. 2. c. 12. all persons who think themselves aggrieved by an order of removal, may appeal to the *next quarter sessions*.
84. By 3 & 4 W. & M. c. 11. § 10. which orders parishes to receive paupers removed by order of two justices, an appeal is given to the next *general quarter sessions*.
85. By 8 & 9 W. 3. c. 30. § 5. in order to prevent vexatious removals and appeals, the justices are authorized to give costs on appeals brought on at their *general or quarter sessions*.
86. By 8 & 9 W. 3. c. 30. § 6. appeals against orders of removal shall be had, prosecuted, and determined, at the *general or quarter sessions* of the place from whence the pauper was removed, and not elsewhere.
87. By 9 G. 1. c. 7. § 8. no appeal from any order of removal shall be proceeded upon, unless *reasonable notice* be given by the parish-officers who appeal to the parish-officers of the place from whence the pauper was removed, the reasonableness of which notice shall be adjudged by the sessions; and if it appear that reasonable notice has not been given, they shall adjourn the appeal to the next quarter sessions.
88. By 9 G. 1. c. 7. § 9. the sessions may order the respondent parish to pay reasonable *charges* to the appellants.
89. By 5 G. 2. c. 19. the justices in sessions may, on appeal, rectify defects in form in the order of the justices, and proceed to the determination of the appeal.
90. An appeal against an order of removal only authorizes the sessions to confirm or quash the order.
91. An appeal may, with the consent of the parties, be referred to the consideration of three justices out of sessions. *Rex v. Justices of Northampton*, ii. pl. 936.
92. The *pauper* who is removed may appeal

- against the order as well as the parish-officers, *Rex v. Hartfield*, ii. pl. 940.
95. But it seems that it ought to appear that the party appealing is the party grieved, *Rex v. Almonbury*, ii. pl. 942.
94. The reasonable notice required by the statute of 9 G. 1. c. 7. is such notice as the practice of the respective sessions requires, ii. pl. 943 (n).
95. And if this practice be not complied with, though they cannot quash the order for this omission, yet they must adjourn the appeal, *Anon.* ii. pl. 945.
96. Nor can the session refuse to receive the appeal for defect of notice; for the notice relates only to the hearing, and not to the receiving the appeal, *Rex v. Justices of Gloucestershire*, ii. pl. 947.
97. And therefore they are bound to receive an appeal, although no notice whatever has been given, *Rex v. Huntingdonshire*, ii. pl. 948.
98. A pauper was examined in August, the removal was dated 12th of November following, the next sessions were 12th of January, at which the appeal was tendered, but no notice of appeal had been served, and it was held that the sessions ought to receive the appeal, *Rex v. Gloucestershire*, ii. pl. 962.
99. But if on a motion for leave to lodge the appeal and to respite the hearing thereof to the next session, the sessions think the appellants had sufficient time to come prepared to try the appeal, and to give notice to the respondents, and only intended to enter and adjourn the appeal, they are not bound to receive it, and to adjourn it to the next sessions, *Rex v. Justices of North Riding of Yorkshire*, ii. pl. 949.
100. But where a pauper was removed on the 4th of January under an order of the preceding day, and on the 5th the overseers met to consider of the settlement, and on the 6th gave notice to the removing parish of trying an appeal against the order at the next sessions, which was on the 13th, and the removing parish was seven miles from the place where the appellants' attorney lived, and ten miles from the appellant parish, and the practice of the session was to give eight days' notice, one inclusive, the other exclusive, it was held that the session could not dismiss the appeal on the ground that notice might have been given in time, but ought to adjourn it; for the 9 G. 1. c. 7. § 8. expressly says, if reasonable notice has not been given, "they shall adjourn the appeal to the next quarter sessions," *Rex v. Justices of Buckinghamshire*, ii. pl. 950.
101. The want of time to enquire into the facts of the case is no excuse for not giving notice of appeal before the ensuing sessions, *Rex v. Sitchester*, ii. pl. 946.
102. But an appeal against an order of removal may be entered at the next sessions but one after the order is executed, if there be not a reasonable time betwixt the execution of the order and the next sessions to make inquiry respecting the pauper's settlement, *Rex v. Flintshire*, ii. pl. 966.
103. Coupling the statute 35 G. 3. c. 101. with the statute 3 W. & M. c. 11. § 9. appeals lie against an order of removal which was suspended, and against a subsequent order for costs; notwithstanding the death of the pauper before any removal of him in fact made, and though the costs were under 20*l.* *Rex v. St. Mary-le-Bone*, ii. pl. 879.
104. Though an appeal against an order of removal has been entered and adjourned once by virtue of the statute 9 G. 1. c. 7. § 8., and though the justices in sessions have a discretionary power to determine whether reasonable notice has been given of the appellant's intention to proceed on the trial of such adjourned appeal, yet if they dismiss the appeal at such adjourned sessions without hearing it, on the ground that they have no authority to try it for want of a sufficient length of notice to the respondents according to a new rule of practice promulgated two sessions before, but then first acted upon, and which was not known to the appellant's attorney, who had given the former usual notice; this court will grant a mandamus to enter continuances, and hear the appeal. *Rex v. Justices of Wiltshire*, ii. pl. 952.
105. An appeal against an order of removal made by corporation justices, must be to the next sessions for the county, and not to the next sessions for the corporation, *Rex v. Wendover*, ii. pl. 955.
106. Same point, *Rex v. East Donyland*, ii. pl. 959.
107. And the appeal must be to the next sessions after the order of removal is served, *Rex v. Milbrook*, ii. pl. 955.
108. But query if an order of removal be served between an original and the adjourned sessions, whether the appeal may be to such adjourned sessions, *Rex v. Monks Risborough*, ii. pl. 954.
109. If an order of removal be made before, but the pauper is not in fact removed until after the sessions next ensuing the making of the order, the appeal may be to the next sessions after the re-

- removal, for it is by this removal that the parties are aggrieved, *Rex v. Norton*, ii. pl. 957.
110. Same point, *Milbrook v. St. John's*, ii. pl. 955.
111. And the appeal against an order of removal must be to the next *general quarter sessions*, *Rex v. Hinderclove*, ii. pl. 956.
112. And it must be to the session next after the time the appellant was aggrieved, *Rex v. Norton*, ii. pl. 957.
113. And if a session be adjourned and no session held on the adjournment day, an appeal to the session subsequent to the adjournment is not the next sessions, *Rex v. West Torrington*, ii. pl. 958.
114. An appeal from an order of borough justices must be to the county sessions, *Rex v. East Donyland*, ii. pl. 959.
115. As to the time of appealing, it must depend upon the particular circumstances of each case as to what shall be considered as the *next sessions*, *Rex v. Justices of Wiles*, ii. pl. 960.
116. And therefore, if from the distance between the parish to which the pauper has been removed and the place where the sessions are held, there is not time to lodge an appeal at the session held immediately subsequent to the removal, the next session ensuing is to be considered as the *next session*, and the justices are bound to receive the appeal at such session, for that is the next possible session, *Rex v. Justices, East Riding, Yorkshire*, ii. pl. 963.
117. But if an order of removal be executed three days before the session in a parish twenty miles distant from the place where the session is holden, and there is no appeal to that session, the justices are not bound to receive the appeal at the next session, for the appeal might have been entered at the former session, and adjourned, *Rex v. Justices of Herefordshire*, ii. pl. 964.
118. But where an order of removal was dated the 24th of *September*, and executed on the afternoon of the 3d of *October*, at a place 54 miles distant from the place where the session was to be held on the 6th of *October*, the court held that the justices ought to receive the appeal at the next session but one subsequent to the execution of the order, for that some reasonable time ought to be given to the parish appealing, to enable them to enquire whether or not it will be proper to enter an appeal, *Rex v. Justices of Flintshire*, ii. pl. 966.
119. But the time limited is not suspended by the matter of the order being referred to arbitration, *Rex v. Justices of Devonshire*, ii. pl. 961.
120. Where the quarter session is held at two different places in the county, the one being an adjournment only of the other, and an order of removal is executed after the beginning of the original session, but before the adjourned session, an appeal at the next ensuing adjourned session is in time, and ought to be received, *Rex v. Justices of Sussex*, ii. pl. 965.
121. If, upon an appeal lodged against an order of removal, the sessions are of opinion that reasonable notice has not been given by the appellant to the respondent parish, they cannot dismiss the appeal on the ground that notice might have been given in time, but are bound by the direction of the statute 9 G. 1. c. 7. § 8. to adjourn the appeal to the next session, *Rex v. Justices of Buckinghamshire*, ii. pl. 950.
122. Where an order of removal was made and executed on the day before the holding of the *Epiphany* sessions, and the appeal was entered, and due notice given for the *Easter* sessions, at which sessions the justices refused to hear the appeal, on the ground that it should have been entered at the *Epiphany* sessions: the court granted a mandamus to the justices to receive such appeal, notwithstanding it appeared that the *Epiphany* sessions continued for 14 days, and were afterwards twice adjourned to distant days, and that it was the practice of the sessions to allow appeals to be entered at any time during their continuance, or at the adjournments, and to respite the hearing to the next sessions, *Rex v. Justices of Surrey*, ii. pl. 968.
123. Where an order of removal from a township in *Yorkshire* to a parish in *Middlesex*, was executed on the 12th of *January*, and the *Yorkshire Epiphany* sessions were holden on the 18th, and the parish did not appeal until the *Easter* sessions, when the justices refused to receive the appeal, the court would not grant a mandamus to the justices to receive the appeal, it appearing that the appellants were not ready to enter and try their appeal at the *Easter* sessions, but only to enter and respite, *Rex v. Justices of West Riding of York*, ii. pl. 969.
124. Where an order of removal was served on the appellant parish on *Saturday*, and the sessions were holden on the following *Tuesday*, and the appellant parish was 37 miles from the place where the sessions were holden, but there was no appeal to those sessions, and the justices refused to receive the appeal at the next sessions,

- the court granted a mandamus, *Res v. Justices of Essex*, ii. pl. 970.
 125. In what case and how an appeal against an order of removal may be adjourned, ii. pl. 968 to 972.

X.

Against Order of Suspension.

126. By 35 G. 3. c. 101. The parish who are ordered by a justice to pay the charges of suspending an order of removal, may within three days give notice of appeal; and if on neglecting so to do, a warrant of distress issues, then if the costs and charges exceed 20*l.*, the party grieved may appeal to the next general quarter session.

XI.

Effect of an Appeal.

127. An appeal against an order of removal is conclusive between the contending parties. (*See REMOVAL.*) ii. pl. 889.
 128. An order of removal unappealed from is conclusive. (*See REMOVAL.*) ii. pl. 890.

APPRENTICE.

- I. Who shall take Apprentices.
- II. Who are compellable to serve.
- III. Of the Indentures.
- IV. Of the Stamp Duty.
- V. Of the Apprentices Fee.
- VI. Jurisdiction of Justices.
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- VIII. Of Parish Apprentices.
- IX. Of the Death of Masters.
- X. Of Apprentices to Sea Service.
- XI. Of Apprentices to Public Charities.
- XII. Apprentices to Chimney Sweepers.
- XIII. Apprentices in Cotton and Woollen Mills.

I.

Who shall take Apprentices.

1. By 5 Eliz. c. 4. § 25. every householder may take any person above the age of ten years and under eighteen as an apprentice to serve in husbandry until his age of 21 or 24 years, as the parties can agree, the said retainer and taking to be made and done by indenture.
2. By 5 Eliz. c. 4. § 26. persons being householders, 24 years of age, inhabiting any city or town corporate, and exercising any art, mystery, or manual occupation there, may take the son of any freeman, not occupying husbandry, nor being a labourer, to serve as an apprentice, after the custom

of THE CITY OF LONDON, for seven years at the least, so as the term do not expire afore such apprentice shall be 24 years of age.

3. By 5 Eliz. c. 4. § 28. every person, being a householder, of 24 years of age, dwelling in any market-town, not being a town corporate, may in like manner have to apprentice or apprentices the child or children of any other artificer not occupying husbandry or being a labourer, dwelling in the same county; to be bound in manner and form aforesaid.
4. But by 5 Eliz. c. 4. § 29. no persons dwelling in such market-town or town corporate, exercising the trades recited in the act, shall take any apprentice except he be his son, or the father or mother have an inheritance or freehold of 3*l.* a year.
5. By 5 Eliz. c. 4. § 33. every clothworker, fuller, shearman, weaver, tailor, or shoemaker, who shall have three apprentices, shall keep one journeyman, and for every other apprentice above three, one other journeyman, on pain of 10*l.*
Repealed by 54 G. 3. c. 96.
6. By 5 Eliz. c. 5. § 12. owners of ships, householders, using the trade of fishing, cannoniers, and shipwrights, may take apprentices being above seven years of age, to be bound according to the customs of the CITY OF LONDON, by writing indented and inrolled in the town where the apprentice shall inhabit, if a town corporate; if not, then in the next town corporate.
7. And the direction of this statute, respecting the inrolment in a town corporate, must be strictly pursued: and therefore where a boy was bound apprentice to a mariner, and the indentures inrolled in the Trinity House, it was held that covenant would not lie on them, though the charter of that fraternity ordains that the members may take apprentices, and that such inrolment shall be good, notwithstanding the 5 Eliz. c. 5.; for the whole court declared, that the king cannot alter the place of inrolment, but that it must be according to the statute, *Poulson's Case*, i. pl. 737.
8. But where a boy, with the consent of his mother, put himself apprentice to a mariner for four years, and the indenture was not inrolled in the town where the apprentice was then inhabiting, nor in the next corporate town, pursuant to 5 Eliz. c. 5., and 2 & 3 Ann. c. 6. it was held, that the clause in the above statute was made for the benefit of the apprentice, and therefore he ought not to be prejudiced by the neglect of the master to inroll the indentures, which in this case were held good,

- although they were not inrolled nor the stamp duty paid, *Res v. Gainsborough*, i. pl. 738.
9. By 1 Jac. 1. c. 17. no hatter or feltmaker shall retain more than two apprentices at the same time, nor those for any less term than *seven years*, on pain of *5l.* a month, except the apprentice be his own son, bound for seven years, and the term do not expire till he be of the full age of 22 years.
10. By 13 & 14 Car. 2. c. 5. § 18. *Norwich weavers*, employing two apprentices, shall employ also two journeymen; and no master weaver under the regulation of said trade shall have more than two apprentices at the same time, or any work boy to weave in the said trade of *worsted weaving*, on pain of *5l.* a month.
11. By 17 G. 3. c. 33. master dyers within the counties of *Middlesex, Essex, Surrey, and Kent*, may take as many apprentices as they please.
12. A bye-law made by a company in a corporation to restrain the number of apprentices to be taken by any of the members is void, *Res v. Coopers' Company of Newcastle*, 7 T. R. 543.
13. The indentures must retain the person bound as an apprentice; for unless he be retained as an apprentice, he is only an articulated servant, though he be bound.
14. For all the cases respecting settlements, where it has been held, that the pauper was not a hired servant, have spoken of the pauper as an apprentice, and that he was to serve as such, *Res v. Little Bolton*, ii. pl. 316.
15. But a contract of apprenticeship may be formed without using the term "apprentice;" for whether it be an apprenticeship or a hiring and service depends on the intention of the parties, which is to be collected from the whole of their agreement, *Res v. Laindon*, ii. pl. 507.
16. See *Res v. Highnam*, ii. pl. 501.
17. But by 51 G. 2. c. 11. although the instrument by which the contract is formed should not be indented, yet this defect shall not prevent an apprentice from gaining a settlement.
18. Therefore, where a master sent his foot-boy to a barber to learn to dress and shave, for which the master gave the barber a fee of *5l.*, and entered into an agreement that the boy should stay with him so long a time, it was held, that this was not an apprenticeship, for there was no covenant on the part of the boy to serve the barber as an apprentice, *Chesterfield's Case*, i. pl. 695.
19. And also the retainer must, for every other purpose, except that of gaining a settlement, be by INDENTURE; and therefore where the writing by which one person agreed to serve another for seven years begun, "THIS INDENTURE witnesseth, &c." but was in fact a deed poll, and not an indenture, it was held, that the master could not maintain any action upon it against a person for enticing away and detaining his APPRENTICE, *Smith v. Birch*, i. pl. 628.
20. So also an agreement to execute indentures of apprenticeship will not constitute a sufficient binding under 5 Eliz. c. 4. although a service of seven years is performed under it; for there must be an indenture duly executed, *Res v. Stratton*, i. pl. 632.
21. Therefore where John Gay, an adult, agreed with Burridge, a stone-mason, to bind himself apprentice to Burridge for six years, who was to find board and lodging, and Gay was to work with him as his apprentice, but no indentures were ever executed; it was held no apprenticeship, though Gay, in pursuance of the agreement, worked with him as his apprentice

II.

Who are compellable to serve.

1. By 5 Eliz. c. 4. § 55. if any person required to be an apprentice as the act describes, shall refuse so do, the housekeeper requiring may complain thereof to one justice of the county, or to the mayor of the town, who may send for the person so refusing to be an apprentice, and if he again refuse, may commit him until he shall comply.
2. But no person shall be obliged by this statute to become an apprentice other than such as be under twenty-one years of age.

III.

Of the Indentures.

1. By 5 Eliz. c. 4. § 25. an apprenticeship can only be created by INDENTURE.
2. And by 5 Eliz. c. 4. § 41. all indentures, covenants, &c. for taking an apprentice otherwise than is by this statute ordained, shall be void, and the person taking such an apprentice shall forfeit 10*l.*
3. By 5 Eliz. c. 4. § 42 & 43. persons bound by indenture, albeit they shall be within the age of twenty-one years, shall be compellable to serve.

- for nearly six years, *Res v. Whitchurch Canonarum*, i. pl. 635.
37. And of course where there are neither indentures nor agreement, but only a binding by parol, there can be no apprenticeship, *Res v. Mawman*, i. pl. 634.
38. For the binding must still be by deed, although, as to settlements, it need not be indented, *Res v. Ditchingham*, ii. pl. 545.
39. By 5 Eliz. c. 4. § 41. all indentures, covenants, promises, and bargains for taking apprentices, made contrary to the directions of this act, are void, and the master shall forfeit for every apprentice 10*l.*, i. pl. .
39. But this shall not affect the customs of London and Norwich respecting the taking apprentices, 5 Eliz. c. 4. § 40.
31. By 5 Eliz. c. 4. § 42. persons under the age of twenty-one, binding themselves apprentices by indenture according to the tenor of this act, although not according to the custom of the city of London, shall be bound to serve for the years in their several indentures contained, as amply and largely to every intent as if the same apprentice were of full age at the time of making such indentures.
32. But although an infant may voluntarily bind himself apprentice, and if he continue apprentice for seven years may have the freedom to exercise his trade, yet neither at common law, nor under the 5 Eliz. c. 4. can he be sued upon the covenant of his indenture, *Gilbert v. Fletcher*, i. pl. 624.
33. And every indenture of an infant, except of a parish apprentice, is voidable at his election on his attaining his maturity, *Ex parte Davis*, i. pl. 640.
34. It is therefore usual for the father, or some other friend, of the apprentice, to become bound with him for performance of the covenants of the indentures; for where the father and son on the one part, and the master on the other, mutually covenant and agree, &c. an action will lie against both father and son, although the breach is committed by the son only, *Whitley v. Loftus*, i. pl. 510.
35. For, per Lord Mansfield, nothing is clearer than that the father is, in such case, bound for the performance of the covenant by the son, *Branch v. Ewington*, i. pl. 639.
36. A father has at the common law no authority to bind his infant son apprentice without his assent, and consequently, where an indenture of apprenticeship was executed by the master and father of the apprentice, but not also by the apprentice him-
self: held that it was invalid, and that no settlement could be gained under it, *Res v. Arnesby*, i. pl. 642.
37. Indentures, though the counter part be not executed by the master, shall not prevent the person bound from deriving the effect of an apprenticeship from them, *Res v. St. Peter's*, ii. pl. 496.
38. For the binding of parish apprentices was authorised by 43 Eliz. c. 2. § 5. long before the statute 8 & 9 Wil. 3. c. 30. § 5. which requires a counterpart, *Res v. Fleet*, ii. pl. 500.
39. And a parish apprenticeship is good although the apprentice does not sign the deed, *Res v. St. Nicholas*, ii. pl. 502.
40. A binding to a master under the age of twenty-one years is good, *Res v. St. Petros*, ii. pl. 504.
41. Indentures of apprenticeship made under the 5 Eliz. c. 4. may be revoked by the mutual consent of those who are parties thereto; and if an apprentice leave his service with his master's consent, the master cannot, in an action of covenant, say, that he revoked such consent, *Barber v. Dennis*, i. pl. 626.
42. But although the parties cannot take advantage of their own act, yet an agreement to cancel indentures shall not affect third persons; and therefore, where a master gave up indentures to his son, who was his apprentice, and the apprentice, before they were actually cancelled, became chargeable to the parish, it was held, that with respect to the parish the apprenticeship continued, *Res v. Thursley*, i. pl. 627.
43. So, where a parish apprentice was bound till he should attain the age of 24 years, and by a formal agreement between his master and himself he was discharged from his apprenticeship and the indentures delivered up; it was held, that the apprenticeship was not determined, because the apprentice being under age, he could not consent to dissolve the contract, *Res v. Austery*, (see *infra*), i. pl. 709.
44. But where a person was bound for seven years, and served five, and then left his master's service, and the indentures were afterwards exchanged between the apprentice's father and the master, with the apprentice's consent, it was held, that the exchanging of the indentures amounted to a cancelling of them, and of course to a determination of the apprenticeship, *Res v. St. Mary Kalendar*, i. pl. 635.
45. So, where a boy eight years and a half old bound himself for seven years by indenture with his father's consent, who was a party thereto, and after a service of a year and a half the indenture was de-

- stroyed by consent of the master, the father, and the apprentice, the apprenticeship was dissolved, and the boy at liberty to bind himself apprentice to another master, *Res v. Weddington*, i. pl. 636.
46. So also where a person was bound for seven years, and, when he had attained the age of 21, gave his master 1*l.* 1*s.* to discharge him from his apprenticeship, and the master gave him a discharge under his hand, the court were of opinion, that if the indenture had not been destroyed, but had remained uncanceled in the master's hands, yet, after this agreement with his apprentice, then at full age, he could not have used the indenture against the apprentice, *Res v. Justices of Devonshire*, i. pl. 637.
47. But if the indentures of an infant apprentice remain uncanceled, the consent of the master that the apprentice shall serve another person will not dissolve the apprenticeship, *Res v. St. Mary, Lambeth*, ii. pl. 571.
48. Nor is the bankruptcy of the master a cancelling of the indentures, *Res v. Buckingham*, i. pl. 650.
49. Nor does an apprentice leaving his master's service, and going into the king's service, with his master's approbation, cancel the indentures, *Res v. Hindringham*, i. pl. 641.
50. Therefore, where an infant bound himself apprentice on 4th December 1792, for five years, and eloped from his master's service and went to sea for a year, during which time he came of age, and afterwards returned into his master's service; the court said, that even supposing the indentures voidable, the mere act of his quitting his master's service was not an avoidance of them, *Ashcroft v. Bertles*, i. pl. 549.
51. So, where an apprentice agreed verbally with his master to give him 7*l.* for the remainder of his time, the master to keep the indentures till the money was paid; it was held that the indentures continued until the condition was performed, *Res v. Chipping Warden*, ii. pl. 550.
52. By 5 Eliz. c. 4. § 26. the persons thereby authorized to take apprentices shall take them "to serve and be bound by indenture as apprentices, by the custom of London, for seven years at least;" and all indentures otherwise made are declared void. Repealed by 54 G. 3. c. 96.
53. The statute 5 Eliz. c. 4. § 26. only renders indentures by which the party is bound for less than seven years, voidable by the parties themselves, and not void, *Res v. St. Nicholas, Ipswich*, i. pl. 631.
54. But an apprentice running away from his master is not avoiding the indentures; therefore where an infant was bound by indenture for six years only, and was committed for running away, it was insisted, that the binding was contrary to the 5 Eliz. c. 4. which requires it to be for seven years at the least, and that the apprentice had done every thing in his power to avoid this voidable indenture; but the court held otherwise, *Res v. Evered*, i. pl. 638.
55. And even a binding for four years has been held sufficient to gain a settlement, for its voidability cannot be taken advantage of except by the parties themselves, *Res v. St. Nicholas, Ipswich*, i. pl. 681.
56. But a binding, though defective in omitting part of the form required by 45 Eliz. c. 2. § 5. and voidable between the parties, yet, if not avoided, shall be good for the purposes of gaining a settlement, *Res v. St. Petros*, ii. pl. 496.
- See Settlement by Apprenticeship.

IV.

Of the Stamp Duty.

57. What stamp duty shall be paid on every indenture of apprenticeship, excepting the indentures of parish apprentices. See statute 55 G. 3. c. 184.
58. Each part of the indenture, except in the case of parish apprentices, must, if no fee, or a fee under 50*l.* be given, be stamped with a 20*s.* stamp.
59. An agreement to assign an apprentice must be stamped pursuant to the statute, *Res v. St. Paul's, Bedford*, i. pl. 655.
60. By 8 Ann. c. 9. § 32. also a duty is imposed of 6*d.* for every 20*s.* on every sum of 50*l.* or under, and 1*s.* for every 20*s.* on all sums above 50*l.* given, paid, contracted, or agreed for, with or in relation to every clerk, apprentice or servant; and proportionably for greater or lesser sums; which duty shall be paid by the master or mistress.
61. By 8 Ann. c. 9. § 35. the monies paid or agreed to be paid with every clerk, apprentice, and servant, shall be truly inserted and written in words at length in the indenture or other writing which contains the covenants, &c., for such service; and such indenture or writing shall bear date upon the day of signing, sealing, or otherways executing the same; upon pain to every master or mistress of double the sum given, one moiety to the king, and the other to the informer, with full costs, to be recovered by action, &c. within one year after the term appointed for the service is expired.

62. By 8 Ann. c. 9 § 56. the commissioners of the stamp office are to provide two additional stamps denoting the *sispenny* and the *skilling* duties; and all indentures, &c., executed in the bills of mortality shall be stamped at THE STAMP OFFICE at *Somerset House*, and the duties paid to the receiver-general within *one month* from the date of the indenture.
63. By 8 Ann. c. 9. § 37. all such indentures, &c., executed in any other part of *Great Britain*, shall, at the option of the party, be sent either to the stamp office, or to some of the collectors residing without the bills of mortality, within *two months* after the date of such indentures, and the duties paid thereon; and in case the said payment shall be made immediately to the receiver general, the indenture shall be forthwith stamped with one of the new stamps; but if made to the collector, he shall indorse on such indenture a receipt for the monies so paid in words at length, bearing date the day on which such payment shall be made, and subscribe his name thereto, and then deliver back the indenture to the bringer thereof.
64. By 8 Ann. c. 9. § 38. the indenture, &c., so indorsed, if made within 50 miles from the bills of mortality, shall, *within three months* after the date thereof, and if made at any greater distance, *within six months* after the date thereof, be brought or sent to THE STAMP OFFICE in London, and immediately stamped, as the case shall require.
65. By 8 Ann. c. 9. § 39. all indentures, &c., wherein shall not be truly inserted the full sum received with such apprentice, &c., or which shall not be stamped according to the tenor of this act within the time limited, shall be *void*, and not available in any court, and the apprentice be incapable of being free of any city, &c., or of following the intended trade.
66. By 8 Ann. c. 9. § 40. But this act shall not extend to apprentices put out at the common or public charge of any parish.
67. By 8 Ann. c. 9. § 43. no indenture required by this act to be stamped shall be given in evidence in any suit brought by the parties, unless the party producing it do first make oath, that the sums inserted were all that were paid on behalf of the apprentice, &c.
68. By 8 Ann. c. 9. § 45. and where any thing, not being money, shall be given, &c., to any master or mistress with any apprentice for whom a duty is chargeable by this act, the duty shall be paid to the full value of the thing given.
69. By 9 Ann. c. 21. § 66. if any master or mistress shall neglect to pay the rates or duties, they shall forfeit *FIFTY POUNDS*, one moiety to the king, the other to him who shall sue for the same, &c.
70. If a person agree to go apprentice to another, and enter upon the service accordingly, and after a trial of three months is bound apprentice by indenture, but the indentures are dated at the time they entered on the service, and not at the time of the execution, the indentures are absolutely void to all intents and purposes by 8 Ann. c. 9. § 55, *Cuerden v. Leland*, i. pl. 643.
71. So also where a mother bound her son apprentice, and paid 1*l.* to the master, which sum was recited in the indenture, pursuant to 8 Ann. c. 9. § 45. but the sixpence duty was never paid, nor the indentures stamped with the additional stamp, they were held void *ab initio*, *Cuerden v. Leland*, i. pl. 643.
72. So also, if, on production of the indentures, they are not stamped, though the duty paid, *Rex v. Llanvair Dyffryn Chwyd*, i. pl. 647.
73. *S. P. Rex v. Edgeworth*, ii. pl. 68.
74. *S. P. Rex v. Ditchingham*, ii. pl. 505.
75. So an agreement of apprenticeship entered into with a view to save the expences of indentures, and to avoid the payment of the duties imposed by 8 Ann. c. 9. § 32. is void and of no effect, *Rex v. Highnam*, i. pl. 651.
76. But in cases where the indenture is not produced, and evidence is given, that indentures actually existed, and were duly executed, the court will presume that they were regularly stamped, and the duty paid, *Rex v. East Knoyle*, i. pl. 644.
77. But before parol evidence is given of the contents of indentures, proof must be made of their being lost, *Rex v. Badby*, i. pl. 649.
78. The sessions presumed that an indenture of apprenticeship executed 30 years before, and under which the apprentice had regularly served his time for seven years when the indenture was given up to him, and proved to be lost, and when the parish in which he was settled under such indenture had relieved him for the last 19 years, was properly stamped in proportion to the apprentice fee of 12*l.* received by the master, although the deputy register and comptroller of the stamp duties proved that it did not appear in the office that any such indenture had been stamped or enrolled during that period; and the judge-

- ment of the justices was confirmed in *B. R. Rex v. Long Buckby*, i. pl. 658.
79. The additional stamp is only required where the money or other thing is given, paid, contracted, or agreed for, with or in relation to the apprentice; and therefore where the mother of a lad proposed to put him out an apprentice, but the intended master refused to take him because he wanted clothes; and the grandfather agreed to give the master 1*l.* 10*s.*, which the master was to and did lay out for the boy in clothes, the court held, that there was not any such stamp necessary on this account; for the statute means money given for the benefit of the master, and in this case he laid out the money merely as an agent to the boy's friends, *Rex v. Northowram*, i. pl. 645.
80. And where no consideration money is given, the indentures do not require a stamp, *Rex v. St. Peter's, Chester*, i. pl. 646.
81. Money given by the parish-officer (in the case of a voluntary binding) as the consideration of taking an apprentice is not liable to the duty imposed by the 8 Ann. c. 9. § 35., for it comes within the exception to it in sect. 40. as being at the public charge of the parish; neither is any duty payable for any consideration, unless it be given to the master or mistress of the apprentice, *Rex v. St. Petroz, Dartmouth*, i. pl. 653.
82. So where in an indenture 6*d.* was the sum mentioned to have been given to the master as a fee with the apprentice, the court resolved, that the statute intended, that when more than 50*l.* were paid, a twentieth part thereof should be paid for duty, and a fortieth part when the sum was under 50*l.*; but that in the present case there would not, under this mode of calculation, be any coin small enough to pay the duty in, and *de minimis non curat lex*, *Baxter v. Faulam*, i. pl. 648.
83. So also where, in indentures of apprenticeship, there was a covenant, that the father would provide the apprentice in meat, drink, washing, lodging, and clothes, and that the master should pay the apprentice 5*l.* a year in consideration of his faithful services, and of the due performance of the covenants, the court seemed to think, that the indentures did require a stamp under 8 Ann. c. 9. § 41. because the judge could not enter into a discussion whether the 5*l.* per annum paid by the master were equivalent for the necessities provided by the father of the apprentice, *Pennington v. Sudall*, i. pl. 650. *notis.*
84. But this point was afterwards more solemnly decided. Thus, where it was agreed in the indentures, that "sufficient meat, drink, apparel of all kinds, physic, surgery, and lodging, and all other necessities, during the said term, shall be found and provided for the said apprentice by the said father, and for which purpose the master is to allow him 4*s.* a week during the said term," the court held the indentures good, although they were not stamped and no duty paid, for the court will presume the equivalent where there is nothing before them to show that it was so, *Rex v. Portsea*, i. pl. 650.
85. So also where in an indenture the apprentice covenanted that he would, "at his own expence, provide for himself meat, drink, washing, lodging, apparel, and physic, at all times during the term, and the master covenanted to pay him 5*s.* a week for the first three years, and 7*s.* a week for the remainder of the term," the indenture was held not to require the additional stamps imposed by 8 Ann. c. 9. § 45. *Rex v. Walton Dale*, i. pl. 652.
86. And where an indenture was, that the father of the apprentice would, at his own charge, find and provide for his son good, competent, and sufficient meat, drink, and lodging on every Sunday in the year during the said term, and would provide him with clothes and apparel of all sorts (except working aprons and shoes), and the master covenanted to provide him with meat, drink, and lodging, except on Sundays, during the term, the court thought the point so clearly settled, that they would not suffer it to be argued, *Rex v. Leighton*, i. pl. 654.
87. A master stipulating for 4*d.* out of every shilling of the earnings of his apprentice is no benefit to him within the meaning of the statutes 8 Ann. c. 9. and 9 Ann. c. 21. for which an additional duty is to be paid; for a master is by law intitled to the whole of what his apprentice earns, *Rex v. Wantage*, i. pl. 656.
88. Where a sum agreed to be given with an apprentice was 5*l.* 5*s.*, which was inserted in the indenture and the duty paid accordingly, it was held sufficient within 8 Ann. c. 9., though in fact only 4*l.* 4*s.* were paid; for "the full sum received, given, paid, agreed, or contracted for," as required by the act, was inserted and the duty paid for it, and the stamp used was of the same description, and the duty appropriated to the same fund as if only 4*l.* 4*s.* had been inserted and paid for, sup-

- posing that would have sufficed, *Rex v. Keynham*, i. pl. 657.
89. In an indenture of apprenticeship, a covenant by the apprentice to allow his master 2s. a week, and to have wages and provide for himself during the term, does not require the additional stamp required by 44 G. 3. c. 98. upon an indenture where a sum of money is contracted for by the apprentice, *Rex v. Bradford*, i. pl. 659.
90. Money given by *parish officers* (in the case of a voluntary binding) as the consideration of taking an apprentice, is not liable to the duty imposed by 8 Ann. c. 9. § 35; for it comes within the exception of 8 Ann. c. 9. § 40., as being at the public charge of the parish, *Rex v. St. Petros*, i. pl. 653.
91. By 18 G. 2. c. 22. § 24. if any master or mistress neglect to pay the said rates and duties within the respective times limited by 8 Ann. c. 9. and 9 Ann. c. 21. they shall further forfeit for every neglect double the rates and duties charged.
92. By 18 G. 2. c. 22. § 25. if any apprentice, &c., on the neglect of his master or mistress to pay the said rates and duties, shall, on notice to his master or mistress, pay the said rates and duties, and also the penalties and forfeitures of this act, within one year after the same became incurred, such apprentice may, within three months afterwards, demand back the apprentice-fee, and if the same be not paid within three months after such demand, he may recover the same by action, and shall be discharged from his apprenticeship.
93. By 18 G. 2. c. 2. § 26. such apprentice shall have the same benefit of the time he shall have served as he could have had in case of any assignment or turning-over to any new master or mistress.
94. By 20 G. 2. c. 45. § 5. if any master or mistress who shall become liable to the double duties shall pay them to the persons who ought to receive them, and also tender the indentures to be stamped at any time within *two years* after the end of the apprenticeship, and before any suit for them is commenced, the indentures shall be good and available in law and equity, and the apprentice as capable of following his trade as if the single duties had been regularly paid.
95. By 20 G. 2. c. 45. § 6. if any apprentice shall, after such double duties incurred, make request in writing, before *one witness*, to his master or mistress, to pay them, and shall on the neglect of his master or mistress to pay the said double duties within three months after such request, pay the same at any time within *two years* after the determination of his apprenticeship, he may, within three months after such payment, demand of his master or mistress *double the apprentice-fee*; and if the same be not paid within three months after such demand, he may recover the same by action; and shall, immediately after such payment, and upon signifying by writing under his hand that he desires to be discharged from his apprenticeship, be discharged from the same.
96. By 20 G. 2. c. 45. § 7. he shall have the same benefit of the time served as if he had been assigned or turned over.
97. By 20 G. 2. c. 45. § 8. if, where any prosecution shall be commenced against any master or mistress for penalties, the apprentice shall pay such double duties within two years after his apprenticeship expires, the indenture shall be good, &c.
98. By 5 G. 2. c. 46. § 18. THE CHAMBERLAIN or other proper officer of every city, &c., where any apprentice obtains his freedom by servitude, shall enrol the name of every apprentice who shall be placed out within such city, the name of the master and mistress, the apprentice-fee, the trade, and the dates of the indenture, on pain of 20*l*.
99. By 5 G. 3. c. 46. § 19. all printed indentures shall have the notice or memorandum described in the act printed under the same.
100. By 5 G. 3. c. 46. § 41. penalties inflicted by this act shall go one half to the king, the other to the informer.
101. An indenture of apprenticeship executed before the passing of the 44 G. 3. c. 98. must be stamped with the premium stamp prescribed by the statute 8 Ann. c. 9., and where such an indenture was stamped at the time of its being produced in evidence, with the stamp required by the 55 G. 3. c. 184.; but not within the time prescribed by the statute of Anne: held, that the indenture was wholly void, and that the pauper, by serving under it, gained no settlement, *Rex v. Chipping Norton*, i. pl. 661.

V.

Of the Apprentice-Fee.

102. By 18 G. 2. c. 22. § 25. if any master shall neglect to pay the stamp duties, and the apprentice, after requiring him so to do, shall pay them, and the penalties incurred by such neglect, such apprentice may, within three months after such payment, demand back the *apprentice-fee*, and

- if not paid within three months after such demand, may recover the same by action.
103. THE COURT OF CHANCERY will order a master, who has put away his apprentice, to restore a proportion of the apprentice-fee, *Thurman v. Abel*, i. pl. 553.
104. If the indentures be not inrolled, the parties may apply to the court of chancery, *Thurman v. Abel*, i. pl. 553.
105. Thus where a master received 250*l.* with his apprentice, and died within two years of the expiration of the term, THE CHANCELLOR decreed that, after debts or specialties paid, the executors should repay the 250*l.* as a debt due on simple contract, deducting 20*l.* a year for the maintenance of the apprentice during the time he lived with his master, *Soam v. Bowden*, i. pl. 663.
106. So also if a master become bankrupt, and, from alteration of circumstances, be rendered incapable of performing his part of the contract, the court of chancery will order the apprentice to come in as a creditor for the amount of the apprentice-fee, after deducting therefrom for his maintenance, *Ex parte Sandby*, i. pl. 664.
107. THE JUSTICES, also at sessions if they discharge an apprentice from his master, may in their discretion order a proportion of the apprentice-fee to be returned, *Du Hamel's Case*, i. pl. 668.
- VI.
- Jurisdiction of the Justices and Sessions.*
108. By 5 Eliz. c. 4. § 35. "the master or apprentice may complain to one justice of the county or place where the master dwells, and such justice may make such order therein as the equity of the case shall require."
109. By 5 Eliz. c. 4. § 35. "and if for want of good conformity in the master, the justice cannot compound and agree the matter, he shall take bond of the master to appear at the next sessions."
110. By 5 Eliz. c. 4. "and if, on the appearance of the master, the sessions think meet, four justices, one to be of the *quorum*, may, by writing under their hands and seals describing the case, discharge the apprentice of his apprenticeship, and vacate the indentures."
111. By 5 Eliz. c. 4. "but if the default be on the side of the apprentice, then the said justices shall cause such due correction to be ministered to him as they shall think meet."
112. By 5 Eliz. c. 4. § 47. "justices are authorized to grant warrants to apprehend apprentices or servants who shall abscond from service, and to imprison them until they demean themselves properly."
113. And an apprentice apprehended under this act cannot object, in his defence, that he had been bound contrary to the direction of the act, and had therefore run away to avoid the indentures, *Rex v. Evered*, i. pl. 684.
114. By 20 G. 2. c. 19. § 3. "any two justices where the master dwells may, upon complaint of any parish apprentice, or of any other apprentice upon whose binding no larger a sum than 5*l.* was paid, summon such master and examine the case, and upon proof on oath of the fact alleged may, whether the master be present or not, if the service of the summons be proved, discharge such apprentice by a certificate under their hands and seals."
115. By 32 G. 3. c. 57. § 11. "justices discharging any apprentice under 20 G. 2. c. 19. may order his clothes to be delivered up, and a sum not exceeding 10*l.* to be paid to the parish officers for placing him out again."
116. By 32 G. 3. c. 57. § 12. "justices may order any master convicted under 20 G. 2. c. 19. when liable to take a parish apprentice, to pay to the parish officer a sum not exceeding 10*l.* nor less than 5*l.* for the purpose of binding out the child."
117. By 20 G. 2. c. 19. § 5. "the two justices, upon complaint by the master on oath, may examine the same, and commit the apprentice to the house of correction to hard labour not exceeding a calendar month, or otherwise may discharge such apprentice as aforesaid."
118. And on a charge for running away under this statute, the apprentice cannot take any advantage of a defect in the indentures, as that they were made for six years instead of seven, or that he was of age before he ran away, and so the indentures were vacated; for he cannot make use of his offence for the purpose of avoiding the punishment that attends it, *Rex v. Evered*, i. pl. 684.
119. Therefore where, upon a *habeas corpus* to bring up the body of an apprentice, the keeper of the house of correction returned, with the body of the party, a regular conviction of him by two magistrates on the statute 20 G. 2. c. 19. for a misdemeanour in absenting himself as an apprentice from his master's service, the court held it no answer to show by affidavit that the party had bound himself, *when an infant*, to

- serve till 25; and that when he came of age he elected to avoid the indentures, and had quitted his master's service; for this was proper matter to be shown to the magistrates below, who, if the matter shown to them were true, acted at their own peril in committing the party, *Ex parte Gill*, i. pl. 685.
120. But a commitment in the disjunctive, "as an apprentice or servant for disobeying his indentures or articles is bad," *Rex v. Evered*, i. pl. 684.
121. By 20 G. 2. c. 19. § 5. "persons grieved may appeal to the next general quarter sessions, where the matter shall be finally determined, and such coers paid to the appellant or respondent as the sessions shall think reasonable, not exceeding 2l."
122. By 20 G. 2. c. 19. § 6. "the certiorari is taken away, and the privileges of the stannaries saved."
123. By 6 G. 3. c. 25. "if any apprentice except such with whom the sum of 10l. was paid, shall absent himself during the term, he shall serve for so long a time as he shall absent himself over and beyond the term of his apprenticeship, unless he shall make satisfaction to his master for the loss he shall have sustained by his absence; and if he refuse so to do, one justice, on complaint of the master, may apprehend such apprentice, and on hearing the complaint determine the satisfaction that shall be made; and if the apprentice do not conform to such determination, the justice may commit him to the house of correction for any time not exceeding three months."
124. But by 6 G. 5. c. 25. § 3. "the application on the part of the master to compel satisfaction for absence as above described must be made within seven years next after the expiration of the term of apprenticeship."
125. And by 6 G. 3. c. 25. § 5. "party grieved, except by order of commitment, may appeal to the next general quarter sessions, on giving six days' notice of his intention to bring such appeal, and of the cause and motive thereof, to such justice, and entering into a recognizance within three days after such notice, to try such appeal; and the sessions shall finally determine the same, and award costs."
126. But by 6 G. 3. c. 25. § 6. "neither the stannaries, nor the jurisdiction of the chamberlain of London, nor any other court within the city, shall be affected by this act."
127. By 33 G. 3. c. 55. "two justices on the complaint of an apprentice with whom not more than 10l. have been given, of his having been ill used by his master, may fine such master in any sum not exceeding 2l."
128. By 4 G. 4. c. 29. § 1. The 20 G. 2. c. 19. & 33 G. 3. c. 55. to extend to apprentices bound out at no larger sum than 25l.
129. Justices may order premium to be refunded, 4 G. 4. c. 29. § 2.
130. The non-payment of wages, or an insufficiency of meat and drink, or the beating of an apprentice by the wife of the master, are said to be good causes of departure. *Sed quare*, i. pl. 665.
131. The master also may justify turning away his apprentice for frequenting gaming-houses, *Woodroffe v. Farnham*, i. pl. 670.
132. But a master cannot turn away his apprentice on account of his having married without his privity or consent, *Stephenson v. Holditch*, i. pl. 674.
133. Nor can a master send away his apprentice on account of sickness, *Rex v. Hales Owen*, i. pl. 678.
134. Nor on account of his being so lame as to be unable to work; or his having the king's evil to such a degree as to be deemed incurable, *Rex v. Hales Owen*, i. pl. 678.
135. Nor can the sessions discharge an apprentice on general allegations of unkind usage by the master, and the declaration of the master that he will not take his apprentice again, for by 5 Eliz. c. 4. § 55. the particular cause of the discharge must be stated in the order, *Rex v. Davis*, i. pl. 681.
136. And using unkindly is not such a misusing as is intended by the statute, *Rex v. Heaseman*, i. pl. 683.
137. A master cannot send an apprentice beyond the seas the better to learn the art of his business, unless the nature of his apprenticeship imports it, *Coventry v. Woodhall*, i. pl. 666.
138. But a neglect on the part of the master to instruct his apprentice in the mysteries of that trade which he was bound to him to learn is sufficient cause of discharge, *Rex v. Amies*, i. pl. 682.
139. Where a poor boy was put apprentice, and after three years service he plainly appeared to be an idiot incapable of learning his trade, this defect was held good cause of discharge, *Anonymous*, i. pl. 669.
140. But it seems now to be settled that the sessions have original jurisdiction in this case, and that the parties need not first apply to a single justice, *Rex v. Johnston*, i. pl. 676.
141. For the application which the 5 Eliz. c. 4. § 35. directs to be made to a private

- justice, seems to mean only to arbitrate and accommodate the dispute; for if he cannot compound the matter, he is to take bond for the appearance of the party at the sessions, *Rex v. Heaseman*, i. pl. 683.
142. This authority, however, must be exercised at a *general sessions*; for it has been held, that justices cannot discharge an apprentice at a *petty or private sessions*, *Anonymous*, i. pl. 671.
143. It was also formerly held, that the power of the sessions extended only to discharge apprentices from such trades as are specially named in the 5 Eliz. c. 4. *Rex v. Gately*, i. pl. 675.
144. But in a subsequent case this objection to an order of discharge was given up as untenable, *Rex v. Amies*, i. pl. 682.
145. And it was said, and not denied by the court, that it is now settled that this power extends to other trades than those mentioned in the act, *Rex v. Collingbourn*, i. pl. 680.
146. It was also formerly held, that when the fault was on the part of the apprentice the sessions could only *punish* him, but could not *discharge* him from his indentures; but it is now held, that the sessions may *punish or discharge* the apprentice, whether the complaint be on the part of the master, or of the apprentice, *Hawkesworth v. Hillary*, i. pl. 667.
147. It was also conceived, that as the 5 Eliz. c. 4. § 55. gives no *express* directions on this subject, the sessions could not order any part of the *apprentice-fee* to be returned; but it is held, that this authority is a necessary incident to their power to discharge, *Du Hamel's Case*, i. pl. 668.
148. And although 5 Eliz. c. 4. only authorises the justices to punish, yet they may discharge an apprentice from a bad master, and a bad apprentice from a master; for the clause does not restrain, but enlarges their power over apprentices beyond the power given them over masters, and they may inflict corporeal punishment or discharge an apprentice at their discretion, *Hawkesworth v. Hillary*, i. pl. 667.
149. Although no previous application has been made to a justice out of sessions, *Rex v. Johnston*, i. pl. 676.
150. And the money may be ordered to be returned, although the apprentice was bound to a trade not mentioned in the statute, *Rex v. Amies*, i. pl. 682.
151. But it must appear on the face of the order, that he either *appeared* or was *summoned*, *Rex v. Rutter*, i. pl. 677.
152. It is said, however, that although there must be a *summons*, it need not be set forth in the order; nor need the order state that the master was heard; for that *summons* and *default* are equal to *appearance*, *Rex v. Amies*, i. pl. 682.
153. But this *opinion* may be doubted for the appearance of the party being expressly required by the statute, *appearance* is thereby made an essential requisite of the jurisdiction of the sessions; and therefore an order was quashed by Lord Hardwicke, because it did not appear on the face of it that the master had *appeared* or had made *default*, *Rex v. Heaseman*, i. pl. 683.
154. But the act must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy: otherwise, if the master stay away, the apprentice can never be discharged, *Dillon's Case*, i. pl. 672.
155. The order also must state the reason of the judgment; for the statute requires the sessions to express the cause of the discharge, *Rex v. Heaseman*, i. pl. 683.
156. The order also must be under the *hands and seals* of the justices, *Anonymous*, i. pl. 675.
157. The order also must be *inrolled* among the records of the sessions, *Rex v. Hales Owen*, i. pl. 679.
158. The sessions of the place where the parties *live* have jurisdiction on this subject; and therefore where *A.* was bound and inrolled apprentice to a freeman in *London*, but lived with his master in the county of *Middlesex*, it was held, that the sessions of the county has a *concurrent* jurisdiction with the sessions of the city, and might discharge the apprentice in *Middlesex* for causes arising in *London*, *Rex v. Collingburne*, i. pl. 680.

VII.

Of assigning Apprentices.

159. By the custom of *London* an apprentice may be *turned over* from one master to another, i. pl. 686.
160. So also by this custom, when the master dies, his personal representative shall instruct him or provide another master, *Rex v. Peck*, i. pl. 691.
161. But without a special custom for this purpose an apprentice cannot be *assigned*, i. pl. 686.
162. The sessions, however, cannot judge of an assignment; for they cannot try the validity of a deed, *Rex v. Barnes*, i. pl. 693.

163. Therefore an order that an apprentice whose master was dead should serve the remainder of his time with the widow's second husband was quashed; for the justices cannot assign an apprentice, *Rex v. Chaplin*, i. pl. 690.
164. So also an order that the executors of a master should keep an apprentice who had been bound to the testator under 5 Eliz. c. 4. is bad; for the mere relation of master and apprentice is personal, and is therefore dissolved by the death of the master, *Rex v. Peck*, i. pl. 691.
165. Therefore, on the death of the master, the apprentice may hire himself as a servant to another master, and receive the wages to his own use, *Rex v. Eakring*, i. pl. 697.
166. For the apprenticeship being dissolved, the personal representatives of the master have no concern with or controul over the apprentice, *Rex v. Pett*, i. pl. 689.
167. So also where the master died, and the executors assigned his apprentice by indenture to another master, the apprentice signifying his assent by writing his name upon the indenture of assignment, THE COURT held, he was not such an apprentice as could be indicted for absconding from service, *Rex v. Channel*, i. pl. 688.
168. But where the master covenanted not only to instruct the apprentice in the arts and mysteries of the trade, but to find him in board and lodging, IT WAS HELD, that an action for breach of covenant lay against the master's executors for turning him out of doors after the testator's death, *Walsworth v. Es. of Guy*, i. pl. 687.
169. For, by HOLY C. J. it would be very hard to construe the death of the master to be a discharge of the covenant; and it is said by Salkeld, that the executor is liable in covenant for not instructing his testator's apprentice, if he do not find him another master, *Rex v. Peck*, i. pl. 691.
170. But to render the personal representatives of the master liable, the "executors or administrators" must be named in the deed, *Baxter v. Burfield*, i. pl. 696.
171. And, at least for the purposes of settlement, the assignment of an apprentice is not void, but voidable only by the parties themselves; for though not good as an assignment, yet it is good by way of covenant, *Cassiter v. Eccles*, i. pl. 692.
172. And therefore, where an apprentice was bound to one Truby with intent that he should serve one Given, which he did for three years, THE COURT held, that it was like assigning a bond, and good by way of contract between the two masters, *Holy Trinity v. Shoreditch*, i. pl. 693.

173. So also where a master died intestate and insolvent, and his widow, before administration, assigned him to another master for the remainder of his time, THE COURT held it good by equitable construction, as to the gaining a settlement, though an assignment of an apprentice is not a strictly legal transaction, because the person of a man is not strictly and legally assignable, *Rex v. East Bridgford*, i. pl. 695.
174. But the assignment in such case must be legally stamped as an agreement, *Rex v. St. Paul's, Bedford*, i. pl. 698.

VIII.

Of Parish Apprentices.

175. By 43 Eliz. c. 2. § 1. "the churchwardens and overseers, with the consent of two justices, may put out poor children of the parish as apprentices wherever they see convenient."
176. By 43 Eliz. c. 2. § 5. "such apprenticeship of a male child shall be until he be twenty-four years of age; and of a female child, until the age of twenty-one years, or the time of her marriage."
177. By 8 & 9 W. 3. c. 30. § 5. And those to whom they are bound shall be obliged to provide for them pursuant to the indentures.
178. So by 20 G. 3. c. 36. "Apprentices bound to persons in incorporated districts."
179. But by 18 G. 3. c. 47. "the apprenticeship for a male child put out pursuant to the 43 Eliz. c. 2. § 5. shall be for no longer term than till such child shall come to the age of twenty-one years."
180. The person to whom a parish apprentice is appointed to be bound is compellable to receive him, *Anonymous*, i. pl. 701.
181. And by 8 & 9 W. 3. c. 30. § 5. it is enacted, "that where any poor children are appointed to be bound pursuant to the 43 Eliz. c. 2. the masters shall receive and provide for them according to the indenture signed and confirmed by the two justices, and also execute the other part of the said indentures, under pain of forfeiting TEN POUNDS."
182. By 32 G. 5. c. 57. § 7. "masters may assign over parish apprentices with the consent of two justices," &c.
183. And by the 20 G. 3. c. 36. the same provisions are enacted with respect to poor persons put out apprentices in any particular district of England by virtue of any private act of parliament for the regulating and ordering of the poor.

184. Indentures and certificates which have heretofore been signed by two persons only acting as churchwardens and overseers to be valid, 51 G. 3. c. 80. § 1.
185. Act not to affect any prior decision in any court, *ib.* § 2.
186. Indentures and certificates of settlement made valid, although the churchwardens, &c., were not sworn in, 54 G. 3. c. 107.
187. Such indentures and certificates to be valid, if executed by the overseers of the poor of any township, &c., *ib.* § 2.
188. Not to affect settlements of persons for whose removal order was made before passing of this act, *ib.* § 3.
189. Indentures for binding parish apprentices, executed previous to 28 May 1821, by one churchwarden, &c., for any parish, &c., for which two churchwardens, &c., had formerly been appointed, declared valid, 1 & 2 G. 4. c. 32. § 1.
190. Not to affect decisions already made, 1 & 2 G. 4. c. 32. § 2.
191. It is discretionary in the parish officers to select such children whom they shall think their parents are not able to maintain, *Rex v. Crosse*, i. pl. 700.
192. And the justices may force the master to take a parish apprentice; for that this power is consequential to their authority to put him out, *Anonymous*, i. pl. 701.
193. And therefore, although the statute directs the penalty to be levied by distress, &c., yet it is held, that the person refusing to receive, to keep, or to provide for such apprentices, may be indicted for disobeying the order, *Rex v. Gould*, i. pl. 703.
194. If, however, the parish-officers select an improper person, as, if they offer to bind a *poor girl* apprentice to a *merchant*, it is in the discretion of the *sessions* to judge whether this is proper or not, *Minchamp's Case*, i. pl. 702.
195. Therefore, where a *poor girl*, who was only eight years of age, was bound apprentice to the inhabitant of a parish who held the *sheaf* or great tithes of the parish, but had no glebe, or house, or barn appropriated to the said tithes, and the sessions confirmed the indenture, THE COURT held it good; for it is for the sessions to judge of the fitness both of the master and apprentice, *Rex v. Sallern*, i. pl. 717.
196. And it is said to have been the opinion of ALL THE JUDGES, that a parish-apprentice may be put to a *clergyman*, i. pl. 699.
197. So a *female parish* apprentice bound to a *day-labourer* to learn the art and mystery of a *housewife*, has been held good, *Rex v. St. Margaret's, Lincoln*, i. pl. 713.
198. So a person occupying land in a parish, but living out of it, is compellable, under the 43 Eliz. c. 2. to receive a parish-apprentice, *Rex v. Clap*, i. pl. 720.
199. And the apprenticeship of a poor boy, bound by the overseers of *St. Nicholas* in the town of *Nottingham*, to a person living in the parish of *Barford* in the county of *Nottingham*, has been held good; for, by 43 Eliz. c. 2. overseers are to bind apprentices "where the justices shall see convenient," and whether in or out of the parish is not specified; but *quære*, whether the overseers can, in such a case, compel a master to receive such apprentices under 8 & 9 W. 3. c. 30. § 5. *Rex v. St. Nicholas Nottingham*, i. pl. 719.
200. And a custom to bind only to occupiers of a particular description, as to occupiers of land of 10*l.* a year and upwards, is not good, *Rex v. Sallern*, i. pl. 717.
201. And it is said, generally, that the binding of parish-apprentices may be to a person residing in another parish, *Rex v. St. Margaret's*, i. pl. 715.
202. And it is determined, that where several persons hold land in partnership, some of whom actually reside on and occupy it, and others reside at a distance in another parish, the latter as well as the former are bound to take parish apprentices, if in other respects they are fit persons to take them, *Rex v. Barwick*, i. pl. 724.
203. And no parish-apprentice, male or female, can be bound for any time beyond the period of attaining 21 years, *Ex parte Davis*, i. pl. 723.
204. Before 43 Eliz. c. 2. an apprentice could not be bound for a longer time than till he should attain the age of 21, and when he attained that age, he might cancel the indenture with the consent of his master, though without the assent of the parish-officers, *Rex v. Ecclesal Bierlow*, i. pl. 711.
205. So also, in binding apprentices under 20 G. 3. c. 36. it is not necessary that the master should actually reside within the parish; if he be an occupier there it is sufficient; for inhabitant and occupier are, for this purpose, synonymous, *Rex v. Trustead*, i. pl. 722.
206. But the justices cannot order, nor can the indentures covenant, that the master, at the end of the term, shall give his apprentice two suits of clothes, one for holidays, and the other for working days; for this sounds like wages, and they can only order maintenance; and not even that after the term is ended, *Rex v. Wagstaff*, i. pl. 704.

207. A parish apprentice may be bound until he shall arrive at 20 years of age, for the statute says, that he shall be bound for no longer term than till he shall be 21; and therefore may be bound for a shorter time than the statutes require, *Res v. Chalbury*, i. pl. 706.
208. A parish indenture, therefore, which is not for any certain time, is not thereby voided, for the statute, in respect of the time, is only directory, *Res v. Woolstanton*, i. pl. 707.
209. So an indenture binding a poor girl an apprentice is not void for want of the alternative "or till marriage," *Res v. St. Petros*, i. pl. 708.
210. And neither a parish indenture nor a common indenture, though voidable, can be avoided but by the parties to it, and not by the sessions, &c., *Res v. St. Petros*, i. pl. 708.
211. And therefore where an infant parish apprentice was, by a formal agreement between his master and himself, discharged, and his indentures delivered up, it was held that the apprenticeship still continued, *Res v. Austrey*, i. pl. 709.
212. Parish indentures must be assented to by two justices in the presence of each other, for if this act be done by them separately, the indenture is void, *Res v. Hamstead Bidware*, i. pl. 721.
213. For the law has in this case considered the justices as the guardians of the children; and their assent is an act of a judicial, and not merely of a ministerial, nature; and whenever the act is judicial they must confer together, *Res v. Hamstead Bidware*, ii. pl. 503.
214. *Red qu.* for an order of removal, signed by two justices separately, and in different counties, is only voidable, *Res v. Stotfold*, ii. pl. 788.
215. But the assent of two magistrates to a parish indenture, is sufficiently signified by one of them signing it alone, and being afterwards present when the other signs it, *Res v. Winwick*, i. pl. 725.
216. If, however, a poor infant bind himself apprentice without the interference of the parish officers, the allowance of the justices was not necessary, *Res v. St. Mary, Reading*, i. pl. 705.
217. For an infant may make an indenture for his own benefit, *Newberry v. St. Mary's*, ii. pl. 490.
218. And if a parish apprentice be bound, it is not necessary to the validity of the indentures that the master should sign the counterpart, *Res v. Fleet*, i. pl. 715.
219. But after the master has signed the counterpart, he cannot appeal to the sessions, *Res v. Saltern*, i. pl. 717.
220. Nor is it necessary to the validity of parish indentures that the apprentice should sign the deed, *Res v. St. Nicholas*, ii. pl. 502.
221. And it has been determined, that where a poor boy was put out an apprentice by a parish to a master who was only between 14 and 15 years of age, the indentures were good notwithstanding the infancy of the master, *Res v. St. Petros, Dartmouth*, ii. pl. 504.
222. The assent of the justices must be by their signing the indenture, *Res v. Saltern*, i. pl. 717. *test.*
223. The stat. 51 G. 3. c. 80. extends to parishes where there are three officers only, one of whom acts as churchwarden as well as overseer; and, therefore, an indenture in such case, signed by two parish officers, one of whom acted in a double capacity, was held to be valid, *Res v. St. Margaret's, Leicester*, i. pl. 733.
224. An indenture stated that the overseers and churchwardens of M. in the county of Warwick, with the consent of justices of the said county, bound a pauper apprentice to J. W. of H., in the county of Leicester, and the justices in their written consent in the margin described themselves as justices of the county aforesaid. Held, that it sufficiently appeared that they were justices of the county of Warwick, *Res v. Hinckley*, i. pl. 780.
225. The statute 43 Eliz. c. 2. does not require absolutely two churchwardens in every parish for the management of the poor, and therefore an indenture binding out a poor apprentice by one churchwarden (where by custom there was but one), and one overseer, was held to be good within the 5th section of that statute, which requires it to be executed by the greater part of the churchwardens and overseers, *Res v. Earl Skilton*, i. pl. 781.
226. Since the 13 & 14 Car. 2. c. 12. an indenture of apprenticeship executed by the overseers of a township which has no churchwardens or chapelwardens, and maintains its own poor separately, is a valid indenture, although neither of the churchwardens of the parish at large, within which the township is situate, join in the execution, *Res v. Nantwich*, i. pl. 729.
227. An indenture binding out a poor apprentice, executed by W. S. churchwarden, and T. G. overseers of the poor of a hamlet maintaining its own poor separately from the parish at large, not being im-

- pened by evidence negating its execution by a majority of the churchwardens and overseers of the hamlet, shall be deemed good, by intending that there were two overseers for the hamlet, as required by stat. 13 & 14 Car. 2 c. 12. § 21. and only one churchwarden, by custom, in the same place, and therefore the apprentice serving 40 days under it gains a settlement, *Rex v. Hunkley*, i. pl. 726.
238. The stat. 43 Eliz. c. 2. § 1. requires an appointment to be made of two overseers at the least, exclusive of the existing churchwardens; and therefore the 5th section, which authorizes "the churchwardens and overseers, or the greater part of them," to bind out poor children apprentices, is not satisfied by a compulsory binding by two persons styling themselves churchwardens and overseers, who had been appointed the overseers at the time when one of them was churchwarden, which latter continued the sole churchwarden for about two months afterwards, when the other overseer was appointed sole churchwarden in his place. For at all events this power is given to a body constituted of more than two persons; though it may be executed by the major part of the body when well constituted, *Rex v. All Saints, Derby*, i. pl. 727.
239. An infant parish apprentice and his master cannot by themselves, without the assent of the parish officers, vacate the indentures, *Rex v. Langham*, i. pl. 716.
240. But after such apprentice has attained 21 years of age, he may, by agreement between himself and his master, vacate the indentures; and the assent of the parish officers is not necessary to the validity of such agreement, *Rex v. Harburton*, i. pl. 718.
241. For at 21 the apprentice is *sui juris*, and his discharge from the indenture concerns, at that time, himself and his master only, and there is no necessity to procure the assent of the parish officers, *Rex v. Ecclesall Bierlow*, i. pl. 711.
242. But an agreement between a master and a parish apprentice, that the apprentice shall work when he pleases on his own account, and pay the master so much a week in satisfaction of his service, is not a dissolution of the indentures, *Rex v. Offer-ton*, i. pl. 714.
243. Nor are the indentures of a parish apprentice cancelled by being delivered up by the son of the master to whom he was bound, *Rex v. Notton*, i. pl. 712.
244. And although the master, after three years' service, tell the apprentice to go about his business and work for himself, and he accordingly works with other persons for the remainder of the term, and applies the money he earns to his own use, without his master's requiring him to account or knowing where he was, yet if the indentures are neither cancelled nor given up, this is no dissolution of the apprenticeship, *Rex v. St. Luke's*, i. pl. 710.
245. A parish apprentice, who was bound by her original master to another master by a new indenture of apprenticeship, without reference to or recognition of the original indenture, which still subsisted in law, does not gain a settlement by serving her new master, as upon a constructive service of the original master under the first indenture, *Rex v. Christowe*, i. pl. 579.
246. The premium given by the parish officers upon binding out of a poor apprentice need not be set out in the indenture in words at length; such an indenture being exempted from any duty by 8 Ann. c. 9. § 40. and the insertion of the premium being required for no other purpose but to ascertain the amount of the duty, *Rex v. Oadby*, i. pl. 732.
247. By 32 G. 3. c. 57. § 1. "if the master or mistress of any parish apprentice die during the term of any such apprenticeship, upon whose binding no larger sum than 5*l.* shall have been paid, the covenant in the indenture for the maintenance of such apprentice shall not continue in force longer than three calendar months after the death of such master or mistress; during which three months the apprentice shall continue to live with and serve the executors and administrators, or with such person as they shall appoint."
248. By 52 G. 3. c. 57. § 1. "in all such parish indentures of apprenticeship there be annexed to the covenant for maintenance a proviso that such covenant shall not continue longer than three calendar months after the death of such master or mistress; but if such proviso shall be omitted, the covenant on the part of the master to maintain the apprentice shall continue only for three calendar months after his death."
249. By 52 G. 3. c. 57. § 2. "within such three calendar months two justices of the peace where the master or mistress died, shall, on the application of the widow of such master, or the husband of such mistress, or by any son, daughter, brother, or sister, or by any executor or executrix, administrator or administratrix, of the deceased, by indorsement on the indenture, direct the apprentice to serve another master for the remainder of his term."

240. By 32 G. 3. c. 57. § 3. "and the same regulations as are above directed to take place on the death of any original master or mistress, shall also take place on the death of any subsequent master or mistress."

241. By 32 G. 3. c. 57. § 4. "if no application be made to two justices within the three months, or if, on application, the two justices should not think fit to continue such apprenticeship, the indentures shall be void."

242. By 32 G. 3. c. 57. § 5. "this act shall not extend to any parish apprentice not living with and serving such original or subsequent master or mistress at the time of the death of any such master or mistress respectively."

243. By 32 G. 3. c. 57. § 6. "if the personal representatives of such deceased master or mistress, or any subsequent master or mistress, refuse or neglect to maintain and provide for such apprentice according to the form of such covenants, two justices, on complaint of the apprentice, or the parish officers, may levy sufficient for the purpose by distress and sale on the goods of such master or mistress."

244. By 32 G. 3. c. 57. § 7. "any master or mistress of any such parish apprentice as is mentioned in the 8 & 9 W. 3. c. 30. § 5. by indorsement on the indentures, or by other instrument in writing, and with the consent of two justices, testified by such justices under their hands, may assign such apprentice for the residue of the term."

245. By 32 G. 3. c. 57. § 7. "the person to whom such apprentice is intended to be assigned shall, at the same time, on the counterpart of the indentures, &c., declare his acceptance of such apprentice, and acknowledge himself bound by the covenants in the indenture; and such master or mistress so taking an apprentice by assignment, may, from time to time, assign such apprentice over to any other master or mistress."

246. By 32 G. 3. c. 57. § 8. "if any such master or mistress become insolvent, two justices, where such master or mistress live, may, on the application of such master or mistress, discharge any such apprentice from the indentures, if, upon inquiry, they find the allegation of insolvency to be true."

247. By 32 G. 3. c. 57. § 9. "but this shall not extend to any indenture under the 43 Eliz. c. 2. where a larger sum than 5*l.* shall have been given."

248. By 32 G. 3. c. 57. § 10. "no indorsement on any indenture in pursuance of

this act shall be liable to any stamp duty, nor any other instrument in writing made for the purpose of this act, liable to any higher duty than is imposed on the parish indentures."

249. By 32 G. 3. c. 57. § 11. "in every case where a parish apprentice shall be discharged under the 20 G. 2. c. 19. the two justices shall order the master or mistress to deliver up the apprentice's clothes, and to pay a sum not exceeding 10*l.* to the parish officers, for the purpose of placing such apprentice out again."

250. By 32 G. 3. c. 57. § 11. "the two justices may compel the parish officers to enter into a recognizance to prosecute the master or mistress of any such parish apprentice for ill treatment of the apprentice."

251. By 32 G. 3. c. 57. § 12. "the justices may order any master convicted under the 20 G. 2. c. 19. when liable to take a parish apprentice, to pay to the parish officers a sum not exceeding 10*l.*, nor less than 5*l.* for the binding out such poor child, but such master may appeal to the quarter sessions, on giving notice," &c.

252. By 32 G. 3. c. 57. § 13. "apprentices discharged under the 20 G. 2. c. 19. for ill behaviour, may be sent to the house of correction for any time not exceeding three calendar months."

253. By 32 G. 3. c. 57. § 14. "parties aggrieved by any master or thing done or omitted to be done by the parish officers or justices, may appeal to the quarter sessions," &c.

254. A parish apprentice not living at the time of his mistress's death with her appointee under the provisions of 32 G. 3. c. 57., though living with her son by her individual consent, cannot gain a settlement in another parish, by serving another mistress with the consent of the son and assignee of the original mistress, given after the death of the original mistress; the contract of service being declared by the recital of the act to be at an end, upon the death of the original mistress, unless continued in the manner described by the 2d, 3d, and 4th sections of the act; to which sections the proviso in the 5th section seems properly to apply, *Res v. Sheephead*, i. pl. 728.

255. By 42 G. 3. c. 45. "overseers shall keep a book for entering the name of every apprentice bound out by them, and each entry shall be signed by two justices."

256. By 56 G. 3. c. 139. § 1. the manner in which parish apprentices, from and after first act 1816, shall be bound, is pointed out.

257. Indenture to be allowed by two justices

- of the county into which the apprentice is to be bound, as well as by two justices of the county from which he is bound, 56 G. 3. c. 139. § 2.
258. Allowance of indenture by county magistrates to be valid in towns and places having exclusive jurisdiction, 56 G. 3. c. 139. § 3.
259. Distance to which apprentice may be bound not to be limited to cities which are counties of themselves, 56 G. 3. c. 139. § 4.
260. No settlement shall be gained, unless directions of this act complied with, 56 G. 3. c. 139. § 5.
261. Penalty of 10*l.* on overseers binding apprentices contrary hereto, 56 G. 3. c. 139. § 6.
262. Children not to be bound until they have attained nine years, 56 G. 3. c. 139. § 7.
263. In case of master's removal, &c., how apprentices shall be disposed of, 56 G. 3. c. 139. § 8.
264. Provisions of 32 G. 3. c. 57. enforced with respect to assigning or discharging apprentices, 56 G. 3. c. 139. § 9.
265. Penalty of 10*l.* on master discharging apprentice without consent of justices, 56 G. 3. c. 139. § 10.
266. Indentures not valid unless approved by two justices, 56 G. 3. c. 139. § 11.
267. Penalties under this act may be recovered by information, &c., 56 G. 3. c. 139. § 12.
268. Justices empowered to dispose of penalties, 56 G. 3. c. 139. § 13.
269. Appeal allowed to general or quarter sessions, 56 G. 3. c. 139. § 17.
270. Power of overseers under this act extended to churchwardens, 56 G. 3. c. 139. § 18.
271. The statute 56 G. 3. c. 139. § 1. requiring that the order of justices, for the binding out of parish apprentices, shall be referred to in the indenture by the date thereof is compulsory, and therefore an indenture, in which the date of the order is omitted is void, and no settlement is gained by serving under it, *Res v. Bawbergh*, i. pl. 734.
272. A pauper settled in the parish of *N. C.* in the county of *Nottingham*, was, pursuant to an order of two justices of the county, bound apprentice by the churchwardens and overseers of that parish to *A. B.* of another parish, in a borough situate in the same county, but having justices who had exclusive jurisdiction therein. The indenture was allowed by the two county justices, but no notice was given to the overseers of the poor of the parish in the borough of the intention to bind such apprentice, nor did they, or any of them, attend before the county justices who allowed the indenture, and admit such notice: held by three justices, *Abbott C. J. dissentiente*, that by 56 G. 3. c. 139. the indenture was void for want of such notice, and that the pauper did not gain any settlement by serving under it, *Res v. Newark-upon-Trent*, i. pl. 735.
273. Where a parish has united with others for the support of the poor, according to the provisions of the 22 G. 3. c. 83., and a guardian has been appointed, the churchwardens and overseers may, nevertheless, bind poor children apprentices, and it is not necessary that the guardian should sign the indentures, *Res v. Lutterworth*, i. pl. 736.

IX.

Of Apprentices to the Sea Service.

274. By 5 Eliz. c. 5. § 12. "owners of ships, fishermen being householders, gunners, cannoneers, and shipwrights, may take apprentices for ten years, by indenture, to be inrolled in the next corporate or incorporate town."
275. And the indentures must be inrolled in the next corporate town, for an inrolment at the Trinity House is not sufficient, although there is a clause to that effect in the Trinity House charter, for the King cannot alter the place of inrolment prescribed by statute, *Poulson Case*, i. pl. 737.
276. But the apprentice shall not be prejudiced by the neglect of the master to inroll the indentures, although the stamp duties are thereby evaded, *Res v. Gainsborough*, i. pl. 738.
277. By 2 & 3 Ann. c. 6. § 2. "the churchwardens and overseers of any parish, with the consent and approbation of two justices of the county or magistrates of the city, in *England, Wales, or Berwick*, may bind out any boy or boys of the age of *ten years* or upwards, who, or whose parents, are chargeable to the parish, or who shall beg for alms, to be apprentice to the *sea-service* to any of his majesty's subjects, being masters or owners of any ship or vessel, and belonging to any port in *England, Wales, or Berwick*, until such boys shall respectively attain the age of *one-and-twenty years*; and such binding shall be as effectual as if such boy were of full age, and had bound himself by *INDENTURE*."
278. By 2 & 3 Ann. c. 6. § 2. "the boy's age, taken from the entry in the *PARISH REGISTER*, shall be inserted in the indenture; or if no such register can be found,

- two justices, &c., shall as full as they can, inform themselves of such boy's age, and from such information shall insert the same in the indentures; and his age so inserted shall be taken to be his true age without any further proof."
279. By 2 & 3 Ann. c. 6. § 2. "the parish-officers shall pay down to the master, at the time of the binding, the sum of 50s., to provide necessary clothing and bedding for the sea service."
280. By 2 & 3 Ann. c. 6. § 5. "the overseers of particular townships or villages are authorized to execute this act in the same manner as the churchwardens or overseers of the poor of a parish," &c.
281. But by 2 & 3 Ann. c. 6. § 4. "no such apprentice shall be compelled, or impressed, or permitted, or suffered to enter himself into the king's service, until he shall be *eighteen years of age*."
282. By 2 & 3 Ann. c. 6. § 5. "the parish-officers shall send the indentures to the collector of the customs of the port to which the vessel of the master belongs, who shall enter the same in a book, and write such registry on the indentures, and subscribe the same, without fee, on pain of *5l.*"
283. By 2 & 3 Ann. c. 6. § 5. "the collector, or his deputy, shall send a *certificate* of the same to THE ADMIRALTY, containing the names and ages of such apprentices, and to what ships they respectively belong; and, upon the receipt of such *certificate*, PROTECTIONS shall be given to such apprentices until they attain *eighteen years of age*."
284. By 2 & 3 Ann. c. 6. § 6. "the master of an apprentice bound out under 43 Eliz. c. 2. by the parish, may, with the consent of two justices of the county, or the approbation of one magistrate of the city where such poor boy was bound, and at the request of the master or his executors, administrators, or assigns, by INDENTURE, assign and turn over such parish apprentice to the master or owner of any ship or vessel using the sea service as aforesaid, which assignment must be transmitted to THE collector, and registered as aforesaid."
285. By 2 & 3 Ann. c. 6. § 7. "poor boys apprenticed pursuant to this act, and such as shall be assigned over from former masters, are exempted from the tribute of 6d. a month to *Greenwich Hospital*, imposed by the 7 & 8 W. 3. c. 21. and 3 G. 2. c. 7. § 36."
286. By 2 & 3 Ann. c. 6. § 8. "every master or owner of any ship or vessel from 30 to 50 tons' burthen may be compelled to take one apprentice, and one mate for each and every 100 tons, such ship or vessel shall exceed the burthen of a 100 tons, on pain of 10*l.*"
287. By 2 & 3 Ann. c. 6. § 9. "such master or owner, before he *clears out* of any port, shall give to the collector of the port an account in writing under his hand, of the names and number of apprentices then remaining in his service."
288. By 2 & 3 Ann. c. 6. § 10. "the parish-officers who bind out such apprentice shall convey the apprentice to the port to which the vessel of the master belongs, and shall, by 11 & 12 W. 3. c. 18. be reimbursed out of the gaol and *Marshalsea money* which by 12 G. 2. c. 29. is to be paid out of the county rate."
289. By 2 & 3 Ann. c. 6. § 11. "a counterpart of the indentures shall be executed by THE MASTER, in the presence of and attested by THE COLLECTOR; and the person who shall convey the apprentice to the port shall take back such counterpart to the parish-officers."
290. By 2 & 3 Ann. c. 6. § 12. "two justices of a county, or one magistrate of a city, in or near THE PORT to which any vessel shall arrive, may determine all complaints of hard or ill usage, &c., between such masters and apprentices."
291. By 2 & 3 Ann. c. 6. § 13. "the collector of every port shall keep an exact register of the number and burthen of all such ships and vessels, with the masters' or owners' names, the names of such apprentices, and from what parish they were respectively sent, and transmit true copies of such registers, signed by them, to the quarter sessions, &c., on pain of FIVE pounds."
292. By 2 & 3 Ann. c. 6. § 14. "every custom-house officer shall insert at the bottom of their *cocquets* the number of men and boys on board the ship or vessel going out of the port, describing the apprentices by their respective names, ages, and the dates of their several indentures."
293. By 2 & 3 Ann. c. 6. § 15. "persons voluntarily binding themselves to the sea service shall not be impressed during the term of three years from the date of the indentures."
294. But by 4 Ann. c. 19. § 17. "this must be understood of such apprentices only who are under 18 years of age."
295. But by 13 G. 2. c. 17. § 2. "the exemption from being impressed for three years is given generally to all persons who shall voluntarily bind themselves to the sea service without limitation respecting age."

296. And by 2 G. 3. c. 15. § 22. "apprentices to mariners and fishermen are exempted during apprenticeship."

297. But by 2 & 3 Ann. c. 6. § 17. "when such apprentices shall be impressed or voluntarily enter, the master shall be entitled to *able seaman's wages* for such apprentices who, upon due examination, are found qualified for the same, notwithstanding their indentures of apprenticeship."

298. By 2 & 5 Ann. c. 6. § 18. "all penalties directed by this act shall be levied by warrant under the hands and seals of two justices," &c. &c.

299. By 4 Ann. c. 19. § 16. "no such master or owner shall be obliged to take any such apprentice under 13 years of age, or who shall not be fit as to *health and bodily strength* for the sea service."

300. By 4 Ann. c. 19. § 16. "the widow, or executor, or administrator of any master or owner shall have the same power of assigning over such apprentice to other masters or owners as is given to the masters of apprentices bound under the 43 Eliz. c. 3. (*Vide supra.*)

X.

Of Apprentices bound out by public Charity.

301. The 7 Jac. 1. c. 3. § 1. RECITES, that "great sums of money have been freely given to corporations and parishes in England, to be employed in binding out poor apprentices, and that many other persons may be disposed to give other monies for the like purpose if such funds may continually remain."

302. IT IS ENACTED by 7 Jac. 1. c. 3. § 2. "that all sums of money so freely given to any person to be continually employed for the binding out apprentices as aforesaid, shall be ordered and disposed, *viz.* that all corporations, and towns and parishes where such monies are given, THAT IS TO SAY, the parson or vicar of every such town or parish, together with the constable or constables, the churchwarden or churchwardens, collectors, and the overseers of the poor, or the most part of them, shall have the nomination and placing of such apprentices, and the guiding and employment of such monies."

303. By 7 Jac. 1. c. 3. § 2. "and if such person shall forbear or refuse to employ such monies for the binding out of such apprentices, they shall forfeit 3*l.* 6*s.* 8*d.*"

304. By 7 Jac. 1. c. 3. § 3. "the master of every such apprentice who shall receive

any such sum of money, shall become bound with one or two securities to repay such sum of money as he shall receive with such apprentice, at the end of seven years; and if such apprentice happen to die within the seven years, then within one year after his death; and if the master shall die within the seven years, then within one year after his death; so as the said monies may be again employed for placing such apprentice with some other person of the same trade."

305. By 7 Jac. 1. c. 3. § 4. "every such sum of money so given shall be employed by the parties within three months after the same shall come to their hands; and if no fit person can be found within the city, town, or parish, to be bound out apprentice, then such of the poorest children in the parish next adjoining shall be bound apprentice therewith in the manner aforesaid."

306. By 7 Jac. 1. c. 3. § 5. "but the poorest sort of children of the parish or place to which the money is given shall be preferred, and no such apprentice shall be above the age of 15 years when he is first bound."

307. By 7 Jac. 1. c. 3. § 6. "every person appointed to employ or dispose of monies so given, shall every *Easter* make a true and perfect account before two justices of the peace dwelling in or next to the parish or place, of all monies expended in binding apprentices by virtue of this act, and of all bonds and obligations taken for the payment thereof: AND ALSO of all such sums of money as shall then happen to be remaining in their hands: AND ALSO shall pay over the balance, &c., to their successors."

308. By 7 Jac. 1. c. 3. § 7. "if any of the persons entrusted with any monies so given as aforesaid shall in any point or degree break the trust and confidence in this behalf reposed, or shall commit any other misdemeanor or offence in misemploying of the said monies, any person may petition THE CHANCELLOR for a commission to examine the said officers, and to rate, raise, and collect the sums lost or misemployed upon the persons, in places not incorporate, who are appointed to have the ordering of the said monies, or upon the able inhabitants of the parish or place, &c., but persons grieved may appeal to the court of chancery."

309. It is not necessary to the validity of an indenture of apprenticeship under this statute, that the parson or vicar should be a party to it, *Rex v. Chalbury*,

310. A voluntary yearly contribution or subscription of divers of the inhabitants of a parish, for the purpose of putting out boys and girls apprentices brought up at a charity school in the parish, is a CHARITY within the meaning of the above statute, and therefore the indenture is by the 8 Ann. c. 9. § 40. exempted from stamp-duty, *Res v. St. Michael, Bethnal Green*, i. pl. 740.
311. So also a bequest of money to "put out such children apprentices as the testator's brother should think fit," is a PUBLIC CHARITY, within the act 8 Ann. c. 9. § 40, *Res v. Clifton upon Dunsmore*, i. pl. 741.
312. An indenture binding out an apprentice with the consent of the trustees of certain funds bequeathed for the binding out poor apprentices, which was executed by the apprentice and master, and recited the trustees to be parties, and in which the consideration paid by the trustees to the master was stated to be 20*l.*, was held to confer a settlement, though the master actually received only 16*l.* 1*6s.* 6*d.*, the residue being retained by the agent of the trustees, for costs and expences of the binding, *Res v. Quainton*, i. pl. 742.
313. And the binding was held good, although the indenture was not executed by the trustees, i. pl. 742.
314. Where an unstamped indenture of apprenticeship recited that a premium of 12*l.* had been paid, but added, that it was paid out of a charitable donation fund, belonging to the parish, and the master being called proved that the premium had been paid by the parish-officers, who told him at the time of paying it that it was charity money: held, that the fact of payment being proved, the recital in the indenture, and the declarations of the parish-officers were not admissible in evidence so as to bring the case within the exception in the 44 G. 3. c. 98. § 190., and that the indenture being unstamped was void, *Res v. Steffington*, i. pl. 660.
315. *Scndle*, that a charitable donation fund belonging to a parish is a public charity within such exception, *Res v. Steffington*, i. pl. 660.

XI.

Of Apprentices to Chimney-Sweepers.

316. By 28 G. 3. c. 48. § 1. "the churchwardens and overseers of any parish in Great Britain, by and with the consent and approbation of two justices of the peace

(such consent and approbation to be signified by such justices in writing under their hands according to the form prescribed by the indenture,) may bind or put out any boys of eight years old, or whose parents shall be chargeable to the parish, or who shall beg for alms; or by and with the consent of the parent or parents of such a boy to be apprentice to a CHIMNEY-SWEEPER, until such boy shall be 16 years of age."

317. By 28 G. 3. c. 48. § 2. "the age of every such boy shall be inserted in the indenture, being truly taken from a copy of the entry in the parish register attested by the minister of the parish; and when no such copy can be had, such justices of the peace shall, as fully as they can, inform themselves of the boy's age, and from such information shall insert the same in the indenture; and the age so inserted shall, in relation to his continuance in service, be taken to be his true age without further proof."
318. By 28 G. 3. c. 48. § 3. "the indenture, which is to be according to the form in the schedule, shall not be liable to any higher or other stamp-duty than is now charged upon indentures for binding out poor parish children."
319. By 28 G. 3. c. 48. § 4. "if any boy under the age of eight years shall be put apprentice to a chimney sweeper, the indentures, &c., shall be void; and the master, on conviction, shall pay, for every such apprentice or servant, a sum not exceeding 10*l.* nor less than 5*l.*"
320. By 28 G. 3. c. 48. § 5. "the overseers of townships and villages shall have the same authority in this respect as the churchwardens and overseers of parishes."
321. By 28 G. 3. c. 48. § 6. "one justice of the peace is empowered to hear and determine all complaints of hard or ill usage from the master or from the apprentice, whether the binding be under the act, or a voluntary binding by the boy himself, and to make such orders therein as justices of the peace are enabled by law to do in other cases between masters and apprentices."
322. By 28 G. 3. c. 48. § 7. "no chimney-sweeper shall have more than six apprentices at one and the same time; and the name of every master chimney-sweeper, and the place of his abode, shall be marked or put upon a brass plate, fixed in the front of a leather cap which every master shall provide for each apprentice, and which such apprentice shall wear when out on his duty, on penalty of any

sum not exceeding 10*l.* nor less than 5*l.*"

323. By 28 G. 3. c. 48. § 8. "and if any master shall misuse or evil intreat his apprentice, or the apprentice shall have any just cause to complain of the forfeiture or breach of any of the covenants of the indenture, he shall on conviction, forfeit not more than 10*l.* nor less than 5*l.*"

324. By 28 G. 3. c. 48. § 9. "no master chimney-sweeper shall let out to hire, or lend by the day or otherwise, to any other person, for the purpose of sweeping chimneys, any apprentice bound under the directions of this act, nor shall cause such boys to call the streets before seven in the morning, nor after 12 at noon from *Michaelmas* to *Lady-day*; nor before five in the morning nor after 12 at noon from *Lady-day* to *Michaelmas*, on pain of any sum not exceeding 10*l.* nor less than 5*l.*"

325. By 28 G. 3. c. 48. § 10. "all convictions for penalties imposed by this act shall be made before one justice, where the offence is committed, on the oath of one witness."

326. By 28 G. 3. c. 48. § 11. "all forfeitures imposed and all costs and charges allowed by this act, to be levied by distress, by warrant of one justice," &c.

327. But by 28 G. 3. c. 48. § 12. "no warrant of distress shall issue until six days after the offender shall have been convicted, and an order made and served upon him for payment."

328. By 28 G. 3. c. 48. § 13. "the distress made under this act shall not be deemed unlawful, nor the parties making the same deemed trespassers *ab initio*, on account of any irregularity which shall be afterwards done by the parties distraining; but any person grieved shall recover full satisfaction for any special damage."

329. By 28 G. 3. c. 48. § 14. "no plaintiff shall recover in any action for such irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made before action brought; and if no such tender be made, the defendant may, by leave of court, at any time before issue joined, pay money into court," &c.

330. By 28 G. 3. c. 48. § 15. "the justice of the peace of the county where the offence is committed, is authorized to administer any oath required by the act."

331. By 28 G. 3. c. 48. § 16. "persons grieved may appeal to the next general or quarter sessions of the place wherein the cause of complaint shall arise; having first entered into a recognizance with sufficient surety to prosecute such appeal, &c., AND ALSO giving notice in writing to the justice within six days."

XII.

Apprentices to Cotton and Woollen Mills.

332. By 42 G. 3. c. 73. § 1. cotton and woollen mills or factories, wherein three or more apprentices, or twenty or more other persons are employed, shall be subject to the regulations of this act,"

333. By 42 G. 3. c. 73. § 2. the rooms shall be washed with quick lime and water twice a year at least, and due care and attention paid by the master or mistress of the mills or factories, to provide sufficient windows or openings, so as to admit a proper supply of fresh air."

334. By 42 G. 3. c. 73. § 3. "apprentices shall be supplied with two complete suits of clothing during the term of apprenticeship, suitable linen, stockings, hats, and shoes, and one new complete suit shall be delivered yearly."

335. By 42 G. 3. c. 73. § 4. "apprentices shall not be compelled to work longer than twelve hours in any one day, nor between nine o'clock at night and six in the morning."

336. By 42 G. 3. c. 73. § 5. "in mills or factories wherein not less than 1000 nor more than 1500 spindles are used, apprentices may be employed in the night till certain periods."

337. By 42 G. 3. c. 73. § 6. "apprentices to be instructed every working day for the first four years of apprenticeship in reading, writing, and arithmetic, in some part of the mill or factory, and the time for such instruction be taken as part of the respective periods limited for them to be employed, or during which they may be compelled to work."

338. By 42 G. 3. c. 73. § 7. "apartments of male and female apprentices to be kept distinct, and two only shall sleep in one bed."

339. By 42 G. 3. c. 73. § 8. "regulations to be observed for the instruction of apprentices on *Sundays* in *England* and *Wales*, and also in *Scotland*, and at certain periods that they be taken to the parish church to receive the sacrament; and to attend once in a month at least, during divine service, in the parish church, or some licensed place of divine worship, or have divine service performed in some place in or adjoining the mill or factory, and that due care be taken that all the apprentices regularly attend divine service," &c.

340. By 42 G. 3. c. 73. § 9. "justices at their midsummer sessions yearly shall appoint two visitors of such mills or factories, who

shall report the condition thereof to the quarter sessions, and who shall have full power and authority to enter into and inspect the same, and whose report shall be entered by the clerk of the peace among the records," &c.

341. By 42 G.3. c. 75. § 10. "in case of infectious disorders prevailing, the visitors may require the master to call in medical assistance, who shall report to such visitors, as often as required, their opinion of the disorder, with its probable effects; and that any expences incurred in consequence shall be discharged by the master or mistress of such mill or factory."

342. By 42 G.3. c. 75. § 11. "persons opening or molesting any of the said visitors shall, for every such offence, forfeit and pay, not exceeding ten nor less than five pounds."

343. By 42 G.3. c. 75. § 12. "copies of this act to be affixed in two conspicuous places of such mills or factories, accessible to all persons employed therein, which shall be kept and renewed so that they may at all times be legible."

344. By 42 G.3. c. 75. § 13. "masters or mistresses wilfully offending against this act, shall forfeit and pay not exceeding five pounds nor less than forty shillings, at the discretion of the justices, half to go to the informer, &c. informations being laid within a month after the offence committed."

345. By 42 G.3. c. 75. § 14. "mills or factories employing a certain number of persons, to be entered in a book kept by the clerk of the peace, who shall receive 2s. for each entry."

346. By 42 G.3. c. 75. § 15. "penalties and forfeitures how to be recovered."

347. By 42 G.3. c. 75. § 16. "form of conviction."

See SETTLEMENT BY APPRENTICESHIP.

ARBITRATION.

1. The sessions, with the consent of the contending parties, may refer the consideration of an appeal against an order of removal, to justices or other persons out of sessions; but they cannot do so of their own accord without the consent of the parties, *Rex v. Justices of Northampton*, ii. pl. 936.

2. The time limited for appealing against an order of removal is not suspended by the matter being referred to arbitration, *Rex v. Justices of Devonshire*, ii. pl. 961.

3. If the sessions refer a case to the consideration of the judges of assize, a proper

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adjournment must be entered on the records of the sessions, *Rex v. Hedingham Sible*, ii. pl. 976.

ATTAINDER.

The settlement of a person attainted, acquired before the attainder, is communicated to his children born afterwards, *Rex v. St. Mary Cardigan*, ii. pl. 45.

ATTORNEY.

1. An attorney cannot be elected overseer of the poor, even though there is a special custom in the parish for every inhabitant to serve the office, *Rex v. Prowse*, i. pl. 9.
2. An attorney is not rateable to the poor for the profits of his profession, *Rex v. Startiant*, i. pl. 207.
3. An attorney may sign notice of appeal to a poor rate, by 41 G.3. c. 23. § 4.

B.

BANKRUPT.

1. The bankruptcy of the master does not dissolve the contract of hiring without the servant's consent, *Rex v. St. Andrew's, Holborn*, ii. pl. 408.
2. Nor does the bankruptcy of the master of an apprentice discharge the indentures, *Buckington v. Shepton Bechamp*, ii. pl. 559.

BAPTIST PREACHER.

1. By 1 W. & M. c. 18. "every minister, preacher, or teacher of a congregation, who shall conform to the toleration act, &c. shall be exempted from all parish and ward offices."
2. Therefore a baptist preacher, qualified according to the above statute, is exempted from serving the office of overseer of the poor, and all other parish offices, whether such offices existed before, or were created since the statute, even although such preacher is at the time a merchant or dealer in hops or other articles; for the toleration act is grounded on natural rights, and the highest natural right is that of conscience, and his being a merchant does not destroy his right any more than the right of a clergyman is destroyed by his holding a farm, or exercising a temporal office, *Kenward v. Knowles*, i. pl. 18.

BASTARDS.

- I. Who shall be deemed Bastards.
- II. Authority of Parish Officers.
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- IV. *Complaint and Examination.*
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- XI. *Punishment of Parents.*
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I.

Who shall be deemed Bastards.

1. A BASTARD is one that is not only begotten but born out of lawful matrimony, i. pl. 484.
2. And if born so long after the death of the husband, that by the usual course of gestation, such child could not be begotten by him, it will be bastard, *Radwell's case*, i. pl. 485.
3. The usual time for a woman to go with child is 40 weeks, *Radwell's case*, i. pl. 486.
4. But the time of gestation may be accelerated or retarded by accidental causes, of which the law will take notice, *Alsop v. Bowtroll*, i. pl. 487.
5. But evidence of a husband's being so infirm as to render impotency probable is not sufficient, *Lomas v. Holden*, i. pl. 498.
6. If a man die, and his widow marry so soon afterwards that a child born during the second coverture may be the child of either husband, such child is legitimate; and on coming of age, may choose which of the fathers he pleases, *Year-Book*, i. pl. 488.
7. Children born during a divorce à vinculo matrimonii are bastards; and during a separation also, if non-access be proved, i. pl. 489.
8. So also if children be born during a divorce à mensâ et thoro, the presumption is, that they are bastards, *St. George's v. St. Margaret's*, i. pl. 493.
9. If the husband be impotent, the wife's children are bastards, *Foscroft's case*, i. pl. 490.
10. But though a man be divorced from one woman for impotency, yet if he marry again, and children are born during such second marriage, the issue are lawful, *Bride's case*, i. pl. 490 (c.).
11. The child of a *feme covert*, conceived and born while the husband is *extra quatuor maria*, is a bastard, *Res v. Alberton*, i. pl. 491.
12. But in such case, it must appear that the husband had no access to the wife for nine months previous to the birth of the child, *Res v. Murray*, i. pl. 492.
13. And therefore, though the husband be in *England*, yet if non-access be proved, the issue are bastards, *Pendrel v. Pendrel*, i. pl. 497.
14. Children born under a second supposed marriage, during the life of the lawful husband, are bastards, if it appear that he had no access, *Res v. St. Bride's*, i. pl. 494.
15. But the mere fact of criminal conversation, however clearly proved, is not of itself sufficient to bastardize the issue, *Res v. Broune*, i. pl. 493.
16. The mother may, on an issue out of chancery to try the legitimacy of her child, give evidence that the child is not her husband's, *Clerk v. Wright*, i. pl. 496.
17. So also she may be examined as to the illegitimacy of her children on an order of removal, *Res v. Bramley*, i. pl. 507.
18. And an order of filiation may be made after her death on her evidence being taken by a justice under the 6 G. 2. c. 31. *Res v. Ravenstone*, i. pl. 548.
19. So also the reputed father of a child may give evidence that he was not married to the mother, *Res v. St. Peter*, i. pl. 499.
20. But although a *feme covert* may, on a question of bastardy, give evidence of the fact of criminal conversation, yet she shall not be admitted the sole witness to prove the non-access of her husband, *Res v. Reading*, i. pl. 500.
21. The general declaration, or the answer of a parent in chancery, are good evidence, after the death of such parent, to prove that a child was born before the marriage; but not to prove that a child born in wedlock is a bastard, *Stevens v. Moss*, i. pl. 505.
22. It is said, however, that an order of bastardy cannot be made against a married woman on her testimony only, *Res v. Rooke*, i. pl. 504.
23. And if a marriage be established by a first order of bastardy, no evidence can be received, on making a second order, to prove illegitimacy, *Res v. Woodchester*, i. pl. 503.
24. So also where a woman is removed with a pauper as his wife, and the order is unappealed from, the parish cannot, on finding that she is not his wife, remove her to her own settlement, *Res v. St. Mary, Lambeth*, ii. pl. 902.
25. And if non-access of a husband be legally proved, an order of bastardy may be made without enquiring whether the husband is dead or alive, *Res v. Bedal*, i. pl. 502.
26. But the child of a married woman may be proved a bastard by other evidence than that of the husband's non-access, *Thompson v. Saul*, i. pl. 506.
27. Non-access of the husband need not be

proved during the whole period of the wife's pregnancy; it is sufficient if the circumstances of the case show a natural impossibility that the husband could be the father, as where he had access only a fortnight before the birth, *Res v. Luffe*, i. pl. 508.

32. The register of a parish, as to the proof of birth or burial, cannot be contradicted by the day-book, *May v. May*, i. pl. 801.

II.

Authority of the Parish Officers.

29. By 13 & 14 Car. 2. c. 12. "the parish officers whose any bastard child is born may seize so much of the profits of the land of the putative father as shall be ordered by two justices for the maintenance and education of the child, and dispose of his goods and chattels by order of the justices."
30. Bastards of lunatics to have the legal settlement of the mother, 51 G.S. c. 79. § 7.
31. The place of birth of a bastard child, being *prima facie* the place of its legal settlement, the parish officers are not only authorised but bound to provide for it, unless such birth in the parish has been procured by fraud, and even then they are bound to take care of it until removed to the place of its legal settlement, *Twining v. Trevelbury*, i. pl. 510.
32. And where a bastard child is born in any parish, for whose sustenance the parents neglect to provide, the parish-officers are obliged to do it without any order from the justices, *Hayes v. Bryant*, i. pl. 516.
33. It seems that if the putative father of a bastard undertake to maintain it, the parish-officers cannot contravene such disposition, *Richards v. Hodges*, i. pl. 511.
34. For although neither the putative father nor the mother has the legal guardianship of a bastard child, yet if the putative father take the child and provide for it, the parish-officers cannot call upon him for maintenance while in his keeping, or order him to deliver it to the mother, *Res v. Felton*, i. pl. 531.
35. And an information on 4 & 5 Phil. & Mary, c. 8. will lie for taking a bastard child out of the care and custody of its putative father, *Res v. Cornfort*, i. pl. 513.
36. And even if the parish-officers, from the neglect of the parents, have taken a bastard child into their keeping, yet the putative father may take it from the parish, and maintain it himself, *Newland v. Osborn*, i. pl. 514.

37. But until such child attain the age of seven years, the mother is entitled to the custody of it for nurture; and therefore if a bastard be settled in a different parish from its mother, the mother shall have the care of it in the parish in which she is settled, and the parish in which the bastard is settled shall pay the expence of its nurture, *Res v. Hemlington*, i. pl. 515.
38. And if the putative father of a female bastard obtain the possession of her from her mother by fraud, the court will order her to be restored to the mother, *Res v. Soper*, i. pl. 515 n.
39. Therefore, where two persons obtained by stratagem a bastard child from the quiet possession, care, and protection of its mother, but soon afterwards returned it to her, from whom it was again taken by them by force; the Court of King's Bench granted a *habeas corpus* and restored the child to its mother, the child being within the age of nurture, *Res v. Hopkins*, i. pl. 515 n.
40. But if the putative father has the custody of the child by fair means, the court, except upon special grounds, will not, perhaps, take it away from him, *Res v. Moseley*, i. pl. 515 n.
41. But the mother of an illegitimate child is entitled to the custody of it in preference to the father; though, from his circumstances, he may be better able to educate it, *Ex parte Ann Keen*, i. pl. 515 n.
42. But in the case of a legitimate child the father is entitled to the custody of it, though it be an infant at the breast of its mother, if such custody is not likely to be injurious to the child, *Res v. De Mannville*, i. pl. 515 n.
43. The parish-officers cannot remove bastard children from the parish in which they are maintained to the parish where their mother afterwards gains a settlement by marriage, *Shermanbury v. Bolney*, i. pl. 512.

III.

The Authority of the Justices.

44. By 18 Eliz. c. 3. § 2. "two justices in or near the parish in which any bastard child is born, may examine into the circumstances, and make order as well for the punishment of the mother and reputed father, as for the relief of the parish."
45. By 18 Eliz. c. 3. "the said justices may also make an order for the maintenance of such child by charging the mother or reputed father with a weekly payment for that purpose."

46. By 18 Eliz. c. 5. § 2. "the order must be subscribed under their hands, and if, after notice thereof, the mother or reputed father make default, the justices may commit to the common gaol, unless they give security to perform the order or to appear at the next sessions, &c."

47. By 13 & 14 Car. 2. c. 12. § 19. "the parish-officers, when any bastard child is born, may seize so much of the profits of the lands of the putative father, as shall be ordered by two justices for the maintenance and education of the child."

48. By 6 G. 2. c. 31. "if any single woman shall be delivered of a bastard child, likely to become chargeable, or shall declare herself to be big with a child, which, if born, would be a bastard, and likely to be chargeable, and shall, in either of such cases, in an examination to be taken in writing, on oath, before one justice, charge any person with having gotten her with child, such justice, upon application to him by the parish-officers, or by any substantial householder, shall issue his warrant for the immediate apprehending such person, and bringing him before such, or some other justice of the county, who shall commit him to the common gaol or house of correction, unless he give security to indemnify the parish, or shall enter into a recognizance to appear at the next sessions, to abide by and perform the orders made therein."

Repealed by 49 G. 3. c. 68.

49. And the magistrate's warrant under this statute, not being returnable at any particular time, continues in force until it is fully executed and obeyed, though it were seven years, provided the magistrate lives so long; and therefore, if the putative father elect to give a bond of indemnity, with two sureties, and one of them refuses to sign, the putative father may be again apprehended on the same warrant, *Dickinson v. Brown*, i. pl. 559.

50. See also *Mayhew v. Parker* and others, where a warrant to bring in a party to plead to an indictment for perjury "so that he may become bound, &c. at the next sessions, &c." which was not executed for 12 months after, was held good, though several sessions had intervened; for it must be construed the next sessions after the arrest. 8 T. R. 110.

51. A justice's warrant continues in force until fully executed. If the putative father of a bastard child agree to indemnify the parish, they may demand any security they think proper, *Dickinson v. Brown*,

i. pl. 535.

52. And by 6 G. 2. c. 31. § 3. "the reputed

father, if committed, may apply to a justice, and require him to summon the parish-officers to show cause why he should not be discharged; and if no order appear to have been made within six weeks after the woman's delivery, such justice shall discharge him."

53. By 6 G. 2. c. 31. § 4. "no woman shall be sent for before she be delivered, and one month after, in order to be examined concerning her pregnancy."

54. The two justices can only commit the reputed father of a bastard child in case he refuse to enter into a bond according to the 18 Eliz. c. 5. § 2. to perform the order or appear at the sessions; and therefore if a reputed father be committed for disobeying an order of maintenance, he shall be discharged on *habeas corpus*, *Smith's case*, i. pl. 517.

55. Nor can the justices in sessions commit on the order being confirmed, *Rex v. Wedd*, i. pl. 521.

56. And unless an order be made in the disjunctive, according to the act, it is bad, *Rex v. Eve*, i. pl. 518.

57. But the justices may order the reputed father not only to pay so much weekly, but also a sum in gross towards the extraordinary charges of the lying-in of the mother, *Rex v. Eve*, i. pl. 518.

58. Though they cannot order that the putative father shall give security to perform the order, *Rex v. Messenger*, i. pl. 525.

59. Nor does the statute 6 G. 2. c. 31. give them any new power upon this subject; for it was only made to restrain justices from proceeding on the application of every lewd woman pretending to be with child until complaint was made by the parish-officers; and for the more effectually indemnifying the parish from the expence, and does not enable them to take security, *Rex v. Fox*, i. pl. 530.

60. And this opinion is now confirmed, *Rex v. Price*, i. pl. 614.

61. In an order of filiation and maintenance, the justices have no power by the statute 18 Eliz. c. 3. to direct the defendant to pay the costs of the parish in obtaining the order; but if the sums to be paid for maintenance and the costs be separated in the order, the order may be quashed as to the costs, and confirmed as to the rest of it, *Rex v. Sweet*, i. pl. 536.

62. Under the statutes concerning bastards no order of filiation or of the payment of expences can be made, unless the child be born alive, *Rex v. De Brouquens*, i. pl. 537.

63. A warrant for the commitment of the putative father of a bastard child, until he

- should pay a sum due for the maintenance of the child and legal accustomed fees, or until he should be otherwise delivered by due course of law, is bad, the magistrate not being authorised under 49 G.3. c. 68. §3. to make such a warrant, *Robson v. Spierman*, i. pl. 538.
64. Nor can they make an order to acquit or discharge the person who is charged with being the reputed father of a bastard child, *Res v. Jenkin*, i. pl. 526.
65. The order of the justices is conclusive of the fact of bastardy until it is reversed, *Webb v. Cook*, i. pl. 519.
66. The justices may make an order at any distance of time; and therefore where the reputed father ran away and returned 14 years after, and an order was made to fix the child on him, the order was held good; for there is no statute of limitation in these cases, *Res v. Miles*, i. pl. 522.
67. The justices cannot order the churchwardens to seize so much of the defendant's goods as they shall think proper; or compel the putative father to give security until he pays the money ordered, *Res v. Cliffe*, i. pl. 520.
68. The justices out of sessions may imprison for refusal to enter into recognizance; but the justices at sessions, on appeal, cannot, *Res v. West*, i. pl. 521.
69. The justices cannot punish a person for secreting a woman big with child, *Res v. Chandler*, i. pl. 523.
70. The justices of a liberty need not state, in an order of filiation, in what county such liberty is situated, *Res v. Messenger*, i. pl. 527.
71. Justices, though not "in or next the limits" where the church of the parish is in which the child was born, may order a joint maintenance of several bastards, and that the father shall "pay the expence of the parish," without stating what those expences are: but neither the two justices, nor the sessions, can order costs to be taxed by the clerk of the peace, *Res v. Sims*, i. pl. 527.
72. So an order made by five justices on the complaint of a town, is good, *Res v. Eaton*, i. pl. 569.
73. If an order of justices be discharged at sessions, two justices cannot make a fresh order on the same person, *Res v. Tennant*, i. pl. 524.
74. If a child be born in an extra-parochial place, no order of bastardy can be made, *Res v. Baker*, i. pl. 528.
75. The justices cannot commit a person for refusing to discover the father of a bastard child, *Res v. Southby*, i. pl. 529.
76. But they may commit a woman unmarried

- at the time the bastard was born, for disobeying their order of maintenance, although she be married at the time the warrant of commitment is made, *Res v. Taylor*, i. pl. 532.
77. And this commitment may be either to the common goal or the house of correction, *Res v. Taylor*, i. pl. 532.
78. So also they may commit a soldier for disobeying an order of bastardy; for soldiers are not protected by the mutiny act against commitment for such offences, *Res v. Archer*, i. pl. 535.
79. And one justice may commit a soldier in actual service for want of sureties, under 6 G.2. c. 31. for being the father of a bastard child, *Res v. Bowen*, i. pl. 534.
80. For the clause in the mutiny acts which exempts soldiers from arrests in cases where the demand is under 20*l.* is clearly confined to civil actions, and incontinence is certainly a crime, and has always been considered as such in the ecclesiastical courts, *Res v. Bowen*, i. pl. 534.

IV.

Of the Complaint and Examination.

81. An order of filiation made on the examination of one justice only, is void, although, in the ordering part of it, it is stated to have been made by two justices, *Res v. Beard*, i. pl. 539.
82. The examination being a judicial act, it must be taken by the two justices in the presence of each other; but if both be present, it is good, though only one of them takes the examination, *Res v. West*, i. pl. 540.
83. For separate examinations by different magistrates may produce different facts, and render it uncertain on which examination the adjudication proceeds; and there is no use in appointing two or more persons to exercise judicial powers, unless they are to act together, *Billings v. Prinn*, i. pl. 543.
84. An order of removal, however, made by two justices separately, and in different counties, has been adjudged not void; but voidable only by appeal to the next sessions, *Res v. Stotfold*, ii. pl. 788.
85. It is not necessary to the validity of an order of filiation, that the putative father should be present at the examination of the woman before the two justices, *Res v. Upton Gray*, i. pl. 544.
86. To render an order of bastardy good, it must, upon the face of it, appear to have been made on the complaint of the parish where the child was born, *Res v. Nottingham*, i. pl. 542.

87. But it is said that the complaint may be made by other persons than the parish-officers, *Rex v. Buckall*, i. pl. 541.
 98. And therefore an order of bastardy made by five justices on the complaint of a town, is good, *Hatton's case*, i. pl. 569.
 99. And the examination of a pregnant woman taken by a justice under 6 G. 2. c. 31. is sufficient to enable the sessions to make an order of filiation on the putative father, though the woman be dead, *Rex v. Ravenstone*, i. pl. 545.
 90. But an order of bastardy cannot be made on an affidavit brought before the justice, for it must be on the testimony of witnesses examined before them, *Rex v. Colbert*, i. pl. 568.

V.

Of the Summons and Commitment.

91. Reputed fathers of bastard children shall be chargeable with the expences incident to the birth, with the costs of apprehending and of the order of filiation, 49 G. 3. c. 68. § 1.
 92. Justice authorized to apprehend persons sworn to by women likely to be delivered of bastards, *Id.* § 2. And commit to prison for three months persons refusing to obey order of maintenance, *Id.* § 3.
 93. Where a single woman having been delivered of a bastard child was committed by one justice of the peace for refusing to answer enquiries as to who was the father of the child: held that the commitment was bad, *Ex parte Martin*, i. pl. 554.
 94. The reputed father of a bastard child must be summoned to appear before an order of filiation can be made, *Rex v. Cotton*, i. pl. 551.
 95. It is said, however, that where the order is made by two justices, the summons need not be particularly stated in the order, *Rex v. Hawkins*, i. pl. 548.
 96. But whether originally made by two justices, or on appeal by the sessions, it certainly ought not only to state that the reputed father was summoned, but it ought also to state the cause of the summons, and not merely set forth that he had notice to appear, *Rex v. Glegg*, i. pl. 549.
 97. But the court will presume that he was summoned, unless the contrary appear, *Rex v. Glegg*, i. pl. 610.
S. P. Rex v. Clayton, i. pl. 553.
 98. The summons need not be by the two justices who make the order, *Rex v. Neal*, i. pl. 559.
 99. The justices cannot commit until default is made, *Rex v. Buckall*, i. pl. 550.

100. Expences and costs in cases of bastardy, subject to the discretion and allowance of magistrates or court of quarter sessions, is the case may be, 49 G. 3. c. 68. s. 4.

VI.

Of the Bond of Indemnity.

101. All securities for indemnifying any parish, &c. for maintenance of bastard, vested in overseers for time being, who may sue on the same, 34 G. 3. c. 170. § 1.
 102. The justices cannot compel the putative father to give security until he has had notice of the order, and neglected to obey it, *Rex v. Chaffey*, i. pl. 555.
 103. A bond given by a third person to the reputed father of a bastard child to save him harmless from all charges respecting such child, is forfeited if the father be called upon by the parish to maintain the child, although under seven years of age, and the mother took it from the care and keeping of the obligor, *Mullins v. Mullins*, i. pl. 556.
 104. The whole penalty of a bastardy bond, may be paid into court, *Brangwin v. Perret*, i. pl. 557.
 105. In debt on a bond conditioned to indemnify the parish, the defendant ought not to be held to bail for the penalty, but only for the amount of the damage incurred, *Kirk v. Strickland*, i. pl. 558.
 106. If the putative father, on being apprehended on a warrant of bastardy, elect to give a bond of indemnity with two sureties, and one of the sureties do not execute the bond, he may be retaken on the same warrant, *Dickinson v. Brown*, i. pl. 559.
 107. But if the parish officers take a note of hand from the putative father instead of a bond of indemnity, as directed by 6 G. 2. c. 31., and the child die before the amount of the note has been expended on it, the father is only compellable to pay the amount actually expended by the parish, *Cole v. Gower*, i. pl. 560.
 108. Where the putative father of a bastard child gave a voluntary bond, and not under the compulsion of stat. 6 G. 2. c. 31. to the parish officers, conditioned for the payment of a sum certain every three months, until she should be deemed capable of providing for herself: held that such bond was good, and the condition sufficiently certain, *Middleham v. Berby*, i. pl. 56.
 109. One who is de facto guardian of the poor of a parish united with other parish under the statute 28 G. 3. c. 25. for the better relief and employment of the poor

and who is received and acknowledged by the parish as guardian, though not legally appointed such under the statute, is yet competent to apply in that character to a justice of the peace to take the examination of a single woman with child, in order to filiate the bastard, which, by the statute 6 G. 2. c. 31. § 1. is directed to be made upon application by the overseers of the poor, in whose place such guardian is appointed, and he is also competent to apply to the justice for a summons against a reputed father for not obeying an order of bastardy, which, by statute 49 G. 3. c. 68. § 3., is directed to be made upon complaint by any one of the overseers of the poor. And though the latter statute directs the magistrate upon such complaint, and proof upon oath of the order for payment of maintenance and non-payment thereof, to issue his warrant to apprehend the reputed father, yet it is proper for the justice to issue his summons in the first instance to the party charged to attend and show cause, &c., *Rex v. Mariyr*,

i. pl. 547.

110. The obligee in a bastardy-bond, after the bond had been forfeited, became bankrupt, and obtained a certificate: held that the parish officers were not thereby precluded from recovering upon the bond further expences, incurred subsequent to the bankruptcy, *St. Martin-in-the-Fields v. Warren*.

i. pl. 563.

VII.

The Form of the Order.

131. The order, it seems, must not only state that the sum ordered is for the maintenance of a bastard child, but must expressly adjudge, that such a child was born in the parish for the relief of which the order is made, *Anonymous*,

i. pl. 563.

S. P. Rex v. Cuddington,

i. pl. 575.

132. For an order made thus: "We A. & B., two justices of the borough of Lynn Regis, residing within the limits where the parish church is, within which parish the child was born, do, &c." is insufficient, it only averring that the justices resided in the parish where the child was born, and not expressly adjudging that the child was born there, *Rex v. Butler*,

i. pl. 585.

133. So where it was alleged in the complaint only that the child was born in the parish, *Rex v. Godfrey*,

i. pl. 580.

134. So where A. B. the reputed father was ordered to pay such a sum to the churchwardens of the parish of C. without expressly adjudging that the child was born

in the parish of C. was held bad; for the court will not allow inferences to give the justices jurisdiction, *Rex v. Childers*,

i. pl. 585.

115. So where the order adjudged T. S. of Workop, to be the reputed father of a bastard child begotten upon A. S. of Aston, and that the said child was become chargeable and likely to continue so, it was quashed, because this was no adjudication that the child was born in the parish, *Rex v. Stanley*,

i. pl. 594.

116. For the birth of the child is the very foundation of the justice's jurisdiction, *Rex v. Willey*,

i. pl. 586.

117. And this adjudication must appear to have been made on evidence on oath of the fact, *Rex v. Hesham*,

i. pl. 584.

118. For the adjudication is the most important and indispensable part of the order, and cannot be supplied by implication, *Rex v. Pitt*,

i. pl. 593.

119. And it has been held that an order stating that the child was baptised in the parish, may, by a reasonable construction, be taken to express the place of its birth, although only by way of recital, *Rex v. Moravia*,

i. pl. 590.

120. And if it appear by the title of the order that the child was born in the parish, it is sufficient; for it is said that this need not be a part of the adjudication, *Rex v. Fos*,

i. pl. 591.

121. An order stating that "whereas it appears to the justices on the oath of the mother, that she was delivered of a child in the parish of N." is a sufficient adjudication that the child was born in the parish of N., *Rex v. Sweet*,

i. pl. 556.

122. An order of bastardy stated to be made upon the oath of the wife, as otherwise, is good; for it will be presumed that the non-access of the husband was proved by competent witnesses on oath other than the wife; or if proved by her also, that the judgment of the justices was founded on other proof, *Rex v. Luffe*,

i. pl. 598.

123. Such an order filiating the child of a married woman is good, though it only state that such child was likely to become chargeable, which are the words of the stat. 6 G. 2. c. 31. § 1. as applied to the bastards of single women; for upon that statute, as well as the stat. 18 Eliz. c. 3., which has the words born out of lawful matrimony, the only question is, whether the child be by law a bastard? *Id. ibid.*

124. Order of filiation on the putative father stating that the child is likely to become chargeable, held sufficient without showing that it was actually chargeable. If the order directs a sum to be paid towards the

- lying-in and maintenance, it seems to be enough, without stating that the sum was expended by the overseers. And if it be stated to be on complaint of the overseers of a township, it need not state that it is a township maintaining its own poor, *Rex v. Hartington-Upper-Quarter*, i. pl. 595.
125. So also the order must state *the sex and the name of the bastard*, *Rex v. England*, i. pl. 579.
126. An order describing the child as chargeable to a *hamlet*, unless it maintains its own poor, is bad, *Rex v. Mitford*, i. pl. 581.
127. An order of maintenance to pay 2d. a week is bad, in respect to the smallness of the sum, *Rex v. Perkasse*, i. pl. 564.
128. So an order directing the reputed father to maintain the child, by paying so much a week *until it be twelve years of age*, is bad; it ought to have been "*so long as it shall be chargeable to the parish*," *Burwell's case*, i. pl. 565.
129. For the justices have no authority but to indemnify the parish, by obliging the reputed father to maintain the child as long as it shall be chargeable to the parish, *Rex v. Barebaker*, i. pl. 570.
S. P. *Smith's case*, i. pl. 576.
S. P. *Rex v. Johnson*, i. pl. 5.
130. But it is said that an order of bastardy to pay so much weekly until the child shall be nine years old, if it should so long live, is good, because it cannot be intended able to provide for itself sooner, *Rex v. Street*, i. pl. 582.
131. But an order to pay 7s. a week *until the child shall be able to get its living by working*, is bad, *Rex v. Sherman*, i. pl. 566.
132. So an order directing the reputed father to pay 4s. to the *midwife*, without stating that the parish had procured her, or were at any charge with respect to her, is bad, *Rex v. Sherman*, i. pl. 566.
133. So an order directing the reputed father to maintain the child "*for the relief of the governor and guardians of the poor of Colchester*" was quashed, because it did not state that it was *for the relief of the poor*, *Rex v. Howlett*, i. pl. 588.
134. So an order of bastardy directing the payment of a sum *in gross* for the charges the parish had been at, without showing how or for what, is bad, *Rex v. Colbert*, i. pl. 568.
135. But an order to pay 40s. for money disbursed, without saying *by whom*, is good; for it is necessarily intended *by the churchwardens*, *Rex v. Smith*, i. pl. 577.
136. So an order on the father to pay 50s. for the midwife and other charges, without showing the money had been expended by the parish, is good, *Rex v. Fox*, i. pl. 592.
137. But an order is bad unless it appear to be made on the examination of witnesses; and therefore an order made on an *affidavit* was quashed, *Rex v. Colbert*, i. pl. 568.
138. An order that the reputed father shall pay so much weekly "*to the overseers of the poor*," is good, *Rex v. Weston*, i. pl. 572.
139. So also an order directing the payment on a particular day, weekly, is good, *Rex v. Weston*, i. pl. 578.
140. And when no particular day is mentioned, but the order directs, generally, that the money shall be paid weekly, then the money is due at the beginning of the week, *Rex v. Fearney*, i. pl. 471.
141. So an order to pay 9l. *in gross* for maintenance and other incidental charges, immediately upon sight of the order, and after that so much *weekly*, is good, *Rex v. Odam*, i. pl. 578.
142. But if it had been for *maintenance only*, it would have been too general, *Rex v. Gravesend*, i. pl. 589.
143. So also an adjudication that the child was *baptized* in the parish, and ordering that 36l. be paid, "*part whereof has been already expended for the maintenance of the child and other incidental charges and expences*," has been held good, *Rex v. Moravia*, i. pl. 590.
144. But the reputed father cannot be ordered to pay a *gross sum* at a future day for the purpose of binding the child out *apprentice*, *Rex v. Willey*, i. pl. 586.
145. The order must expressly adjudge that the person charged with the maintenance, is the reputed father of the child; and therefore an order stating, "*Whereas it appears to us, that A. B. is,*" &c. was held bad; for this is not an express adjudication, *Rex v. Pitts*, i. pl. 593.
146. So an order of bastardy made by two justices, saying, "*We doth adjudge,*" &c. is bad, *Rex v. Weston*, i. pl. 574.

VIII.

Appeal from an Order of Bastardy.

147. By 18 Eliz. c. 3. § 2. it is enacted that sufficient surety shall be taken to perform the order, or else personally to appear at the next general sessions.
148. In cases of bastardy, appeal allowed to the next general quarter sessions, on giving notice and entering into recognizance, 49 G. 3. c. 68. § 5.

149. It is said that the words "next general sessions" mean, that the order made by two justices must be confirmed or discharged at the next general sessions for that part of the county where the order was made, and not at the sessions for the county; for it would otherwise be mischievous in many counties where there are several sessions in distinct parts of the county, *Rex v. Coyston*, i. pl. 596.
150. And the next sessions shall be that which is held next after the reputed father has notice of the order by two justices, *Rex v. Brown*, i. pl. 597.
151. And the appeal must be to the next general sessions, and not to the next quarter sessions after notice, *Rex v. Shaw*, i. pl. 598.
152. And it must appear on the face of the order, that the sessions to which the appeal is made was the next sessions after notice, *Rex v. Brown*, i. pl. 597.
153. For if a court of general quarter sessions next after an order of bastardy quash the order, the court of king's bench will not intend that a court of general sessions intervened, and therefore, unless that appear, the order will be good, *Rex v. Chichester*, i. pl. 599.
154. By 49 G. 3. c. 68. § 5. ten clear days' notice of the intention to appeal is required: held that the ten days are to be taken exclusively, both of the day of serving the notice and the day of holding the sessions, *Rex v. Herefordshire (Justices)*, i. pl. 601.
155. *Scmble*, that the entering into the recognizance required by 49 G. 3. c. 68. § 5. before the justices who make an order of bastardy, does not dispense with the necessity of giving such justices notice of appeal against the order, the statute requiring the party to give notice of bringing such appeal, "and of the cause and matter thereof." But held that a parol notice of such appeal, and of the cause and matter thereof, will be sufficient, *Rex v. Salop (Justices)*, i. pl. 602.
156. Notice of appeal against an order of filiation was given in the following form: "I, A. B., of, &c. intend at the next general quarter sessions, to be holden, &c., to commence and prosecute an appeal against an order of filiation made, &c., whereby I was adjudged to be the father of a bastard child born on the body of E. R., and chargeable to the parish of S.:" held that this notice was insufficient, the cause and matter of appeal not being set out as required by 49 G. 3. c. 68. § 5. *Rex v. Oxfordshire (Justices)*, i. pl. 603.
157. An appeal against an order of bastardy

cannot be entered at the quarter sessions, unless there be such notice and recognizance as is required by the 49 G. 3. c. 68. § 7. *Rex v. Lincolnshire (Justices)*, i. pl. 604. But see further upon this subject "APPEAL," § vii.

IX.

Of the Jurisdiction of the Sessions.

158. By 3 Car. 1. c. 4. § 15. "all justices within their respective limits shall have the same authority with respect to bastard children, as is given by 18 Eliz. c. 3. to county justices."
159. By 13 & 14 Car. 2. c. 12. § 19. "the sessions may order the parish officers to dispose of the goods and chattels of the putative father."
160. By 6 G. 2. c. 51. § 2. "if the woman die, or marry before her delivery, or miscarry, or shall not prove with child, he shall be discharged at the next sessions, by warrant under the hand and seal of one justice."
161. The sessions have an original jurisdiction in cases of bastardy, *Slater's case*, i. pl. 605.
162. And therefore an original order of bastardy may be made at sessions, *Rex v. Greaves*, i. pl. 613.
163. And after the sessions have made an order, the two justices cannot make an order in the same case, *Slater's case*, i. pl. 605.
164. Nor if the sessions discharge the order of two justices, *Rex v. Tenant*, i. pl. 616.
165. But the sessions may quash an order of bastardy made by two justices, and make an original order on another person, *Wood's case*, i. pl. 607.
166. And against such original order there is no appeal, *Pridgeon's case*, i. pl. 608.
167. But in making an original order on the statute 3 Car. 1. c. 4., which is the statute that gives jurisdiction to the sessions in this case, they may commit as the two justices might have done on the 18 Eliz. c. 3., that is, unless the party put in security to perform the order, or to appear at the next sessions, *Rex v. Weston*, i. pl. 608.
168. But the sessions cannot order the reputed father to give security for the performance of the order made by one justice, *Rex v. Price*, i. pl. 614.
169. Therefore where two justices made an order of bastardy, adjudging the defendant to be the reputed father, and ordering him to pay to the parish officers 50s. for the midwife, and 2s. a week for the maintenance of the child, and also "that he give security to the parish to perform the

order," the order was held bad as to this last part; for on the 18 Eliz. c.3. they can only order, on non-performance of the order, the party to be committed, unless he shall give security to perform it, or to appear at the sessions; and the 6 G. 2. c.32. has not given the justices any new power upon this subject, *Res v. Fox*,

i. pl. 592.

170. The sessions cannot make an order fining a constable who has let the putative father escape, *Res v. Ridge*, i. pl. 609.

171. In an order on the putative father, it ought to appear that he was summoned; but the court will intend that he was summoned, unless the contrary appear, *Res v. Clogg*,

i. pl. 610.

172. So also if the order recite, that it was made upon full hearing, the court will intend that the merits of the case came before them, *Res v. Teriam*,

i. pl. 611.

173. If the sessions confirm an order made by two justices, it is conclusive, and cannot be vacated at a subsequent sessions, *Res v. Arundel*,

i. pl. 612.

174. By 5 G. 2. c.19. "upon all appeals against orders of justices, the sessions may cause any defects of form to be rectified and amended without any costs or charges to the parties, and proceed to hear and determine upon the merits of such orders," &c.

X.

Of Certiorari and quashing Orders of Bastardy.

175. If an order of bastardy be duly removed into the court of king's bench by *certiorari*, it may be quashed for objections on the face of it, although there has been no previous appeal to the sessions, *Res v. Stanley*,

i. pl. 618.

176. But a *certiorari* does not lie to remove an order of sessions, by which a soldier is continued in custody on a charge of bastardy; he should be removed by *habeas corpus*, *Res v. Bowen*,

i. pl. 619.

177. The court will not quash the order unless the putative father be present in court, *Res v. Matthews*,

i. pl. 615.

178. And, on its being quashed, the court will order him to enter into a recognizance to abide by the determination of the sessions, *Res v. Gibbons*,

i. pl. 617.

179. But the attendance of the putative father has been dispensed with, where the court was of opinion that the order should be quashed so far as respected his giving security to perform it, and the discharging his recognizance, *Res v. Price*, i. pl. 614.

XI.

Punishment of Parents.

180. Women having bastard chargeable to the parish, may be committed and set to work for not less than six weeks, nor more than 12 calendar months, 50 G. 3. c.51. § 2.

181. Justices may mitigate confinement after six weeks' confinement, and discharge the woman, *Id.* § 3.

182. No woman to be committed till one calendar month after she shall have been delivered, *Id.* § 4.

183. The mother of a bastard child cannot be punished for the second offence under statute 7 Jac. 1. c. 4. § 7. (repealed by 50 G. 3. c.51.) unless she has been before punished for a first offence, under the 18 Eliz. c.3. i. pl. 620.

184. Where an order of bastardy has been made, and the time for appeal past, it cannot be enforced under 18 Eliz. c.3. but the magistrate must proceed under 49 G. 3. c.68. § 3. by commitment for three months, *Ex parte Addis*, i. pl. 621.

XII.

Bastards born in Hospitals.

185. By 13 G. 3. c.82. § 1. "no hospital or place shall be established, used, or appropriated for the public reception of pregnant women, under public or private support, in any parish in England, unless a licence shall be first had and obtained from the justices of the peace, at some one of their general quarter sessions, held for the county or place where such hospital shall be situated; which licence the sessions are required to grant, on the person applying paying forty shillings for every such licence, to the clerk of the peace for his trouble, and as a fund to defray the expense of stamp and parchment, used for such licence."

186. By 13 G. 3. c.82. § 2. "every such licence shall be written on parchment with a five shilling stamp, and signed by two justices; a copy of which shall be kept among the records of the sessions."

187. By 13 G. 3. c.82. § 3. "places already established for the public reception of pregnant women, shall be deemed hospitals within the act."

188. By 13 G. 3. c.82. § 4. "an inscription, as described in the act, shall be placed over the door, or public entrance into every such hospital."

189. By 13 G. 3. c.82. § 5. "no bastard born in such hospital shall be legally settled in, or shall be entitled to any relief as a parishioner, from the parish wherein such

hospital shall be situated; but every such child shall follow its mother's settlement."

190. By 15 G.3. c.82. § 6. "in case it become necessary to remove the mother of a child so born a *bastard*, and the child so born a *bastard*, or either of them, from the parish in which the hospital is situated to the mother's settlement, the parish where she is settled being within twenty miles of such hospital, shall be charged with the expences of such removal, to be settled and allowed by a justice of the peace, and levied by distress," &c. &c.
191. By 15 G.3. c. 82. § 7. "persons grieved by such removal or distress may appeal to the quarter-sessions for the county wherein the grievance is suffered, within four months after the fact done, and giving fourteen days' notice in writing, and within two days after such notice, entering into a recognizance," &c.
192. By 15 G.3. c. 82. § 8. "the parish-officers and magistrates of the mother's place of settlement, shall have authority to apprehend the *reputed father* of such *bastard child*; to take security for the indemnity of the parish; and to punish the parents in the same manner, as in other cases of bastardy."
193. But by 15 G.3. c. 82. § 9. "nothing in this act shall extend to alter the settlement of any *bastard child* so born as aforesaid, in cases where the mother's settlement cannot be found."
194. By 15 G.3. c. 82. § 10. "the governor or clerk of such hospital, before the admission of any pregnant woman, shall then, or as soon as she is able to go, take such woman before a justice, who shall examine her upon oath, whether she be *married* or *single*: and the particulars of such examination shall be entered in a book to be provided by the hospital for that purpose, and shall be signed by the justice who takes such examination."
195. By 15 G.3. c. 82. § 11. "but if any woman, on admission, shall produce an *affidavit* sworn by her before a magistrate of the place where the hospital is situated, that she is a *married* or a *single woman*, as the case may be, she shall not be compellible to go before a justice."
196. By 15 G.3. c. 82. § 12. "if any woman shall be delivered of a *bastard child* in such hospital, the governor, &c. shall, four days at the least before any such woman shall be discharged, give personal notice, or notice in writing, of such delivery to the parish-officers, who are authorized, after such notice, to attend at the hospital within the four days, and convey the woman before a justice where such birth

shall happen, who shall examine the woman upon oath relative to her last legal settlement, and shall certify in writing to the parish-officer the whole of such examination, which shall be deposited among the papers of the parish."

197. By 15 G.3. c. 82. § 13. "but if the parish-officer shall be informed that the woman is not by that time sufficiently recovered to be taken out of the hospital and carried before a justice, he shall wait till a further notice is given."
198. By 15 G.3. c. 82. § 14. "every woman so delivered of a *bastard child* shall remain in the hospital until she be adjudged in a fit condition to be discharged, and until she shall have been examined before some justice as to the place of her settlement."
199. By 15 G.3. c. 82. § 15. "but nothing in this act shall authorise the detaining of any woman so delivered of a *bastard child*, longer than *six weeks* after the birth of the child, unless by her own consent."
200. By 15 G.3. c. 82. § 16. "a penalty of 50*l.* is inflicted on every governor, &c. wilfully neglecting or refusing to comply with the directions of the act, and 10*l.* on every parish-officer; to be recovered by action, one moiety to the poor, the other to the informer."
201. By 15 G.3. c. 82. § 17. "the defendant may plead the *general issue*, &c. and, on a verdict in his favour, shall have *treble costs*; and action must be commenced within *six months*."
202. By 20 G.3. c. 36. § 2. "*bastards born in any house of industry, &c.* shall follow the mother's settlement."
203. A room in a parish workhouse, licensed pursuant to 15 G.3. c. 82. and appropriated to the reception of, and used for the purposes of delivery of pregnant women resident within the parish, whether settled there or elsewhere, and the expences of which room was defrayed in common with the general expences of the workhouse, out of the parish rates, is not an hospital or place within the 15 G.3. c. 82. § 5. *Res v. Manchester*, 1. pl. 622.

BENEFIT SOCIETIES.

1. Bastards born under certificates from benefit societies, shall be settled in the mother's parish, 55 G.3. c. 54.
2. In order to prevent the settlement of an apprentice bound to his master, who was residing in the parish under a certificate from a friendly society under 55 G.3. c. 54, it is not sufficient for the certified parish merely to produce the certificate upon an appeal to the sessions from an order of removal of the apprentice to such

parish, but they must also shew that such certificate had been *delivered* to the parish officers, before the service of the apprentice, *Rex v. Egremont*, ii. pl. 771 n.

3. The 35 G. 3. c. 101. did not repeal 33 G. 3. c. 54. And, therefore, where an unemancipated daughter was delivered of a bastard child in the township of *I*, during her father's residence there, under a certificate acknowledging him to be a member of a friendly society established under 33 G. 3. c. 54., held, that such certificate extended not only to him, but to all the members of his family also; that the daughter, therefore, was at the time of her delivery residing in the township under the authority of 33 G. 3. c. 54., and that by sect. 25. of that act, the settlement of the child followed that of the mother, *Rex v. Idle*, ii. pl. 21.

BILL OF EXCEPTIONS.

1. A *bill of exceptions* will not lie to the justices in sessions on hearing an appeal against an order of removal, *Rex v. Preston*, ii. pl. 932.
2. For the justices at sessions on an appeal are in the combined characters of judges and jurors, and it is with them to decide on the truth of the facts as well as on the law of the case, and therefore it would be impossible for the king's bench to say, what portion of the evidence in any particular case they believed or disbelieved; the majority of opinions bind the whole; therefore *quære*, if the opinion of a minority were adopted, ii. pl. 932 n.

BINDING.

See APPRENTICE.

BORSHOLDER.

1. Serving the office of borsholder for a year, although not sworn in till half the year is expired, is such an execution of an annual office, as will avoid a certificate under the statute 9 & 10 W. 3. c. 11. *Holy Trinity v. Garrington*, ii. pl. 235.
2. But a certificate-man, having a *tally* left with him as borsholder, if he was never during the year presented, admitted, or sworn into the office, is not thereby legally placed in such office, and therefore cannot gain a settlement under it, *Wingham v. Sellinge*, ii. pl. 238.
3. So where *A.* was *presented* by a leet jury as *constable*, but never *sworn in*, and he procured *B.* to serve in his stead; but *B.*, though *sworn in* before a justice, was never *presented* by the leet, the custom of

- which required all constables to be so presented, it was held that *B.* gained no settlement by serving the office, *Rex v. Winterbourn*, ii. pl. 241.
4. But serving for a year as a *deputy* to the borsholder of a parish, is not serving an annual office in the parish, so as to entitle such deputy to a settlement, *Rex v. Allcannings*, ii. pl. 242.
 5. And the office must be served for a year; for if a borsholder becomes chargeable before the year expires, he thereby loses his settlement, *Fittleworth v. Pulborough*, ii. pl. 262.
 6. See also *Cold Ashton v. Woodchester*, ii. pl. 265.
 7. And *Rex v. Inhabitants of Bow*, ii. pl. 255.

C.

CATTLE-GATE.

A *Cattle-gate* is a tenement within the 15 & 14 Car. 2. c. 2. *Rex v. Whisley*, ii. pl. 154.

CERTIFICATE.

- I. *The Statutes.*
- II. *Of granting Certificates.*
- III. *Effect of Certificate.*
- IV. *Duration of Certificate.*

I.

Of the Statutes.

1. By 13 & 14 Car. 2. c. 12. "Two justices of the peace, on complaint to one justice by the parish officers, might, within 40 days, remove any person who was likely to be chargeable from any tenement, under the yearly value of 10*l.* to the parish in which he was last legally settled, unless he gave sufficient security to the parish, to be allowed by the said justices."
2. But now by 35 G. 3. c. 101. reciting the above statute, "no poor person shall be removed, until such person shall have become actually chargeable."
3. By 13 & 14 Car. 2. c. 12. "persons may go into any parish to work in time of harvest, or at any other time, so that he carry with him a CERTIFICATE from the minister of the parish and one of the churchwardens and one of the overseers, that he hath a dwelling, and hath left his family, and is declared an inhabitant there," &c.
4. By 8 & 9 W. 3. c. 30. "if any person whatsoever shall come into any parish to inhabit, and shall bring and deliver to the churchwardens or overseers a CERTIFICATE under the hands and seals of the churchwardens and overseers of any other parish, or the major part of them, or under the hands and seals of the overseers of

any other place where there are no churchwardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons mentioned in the said CERTIFICATE to be inhabitants legally settled in that parish, township, or place, every such CERTIFICATE, having been allowed of and subscribed by two or more justices of the peace, within the parish or place from whence any such CERTIFICATE shall come, shall oblige the said parish or place to receive and provide for the person mentioned in the said CERTIFICATE, together with his or her family, as inhabitants of that parish, whenever he, she, or they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place to which such CERTIFICATE was given; and then, and not before, it shall be lawful for any such person, and his or her children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such CERTIFICATE was brought."

5. By 9 & 10 W. 3. c. 11. "no person whatsoever who shall come into any parish by such CERTIFICATE shall gain any settlement therein, unless he shall really and bona fide take a lease of a tenement of the value of ten pounds, or shall execute some annual office, being legally placed therein."

6. By 12 Ann. c. 18. § 2. "an apprentice, or a hired servant to a certificated person shall not, by virtue of the apprenticeship, or hiring and service, gain any settlement in the parish; but every such apprentice or servant shall have his settlement in such parish, as if he had not been bound apprentice, or served as a hired servant with such certificated person."

7. By 5 G. 2. c. 29. § 8. "the witnesses who attest the execution of such CERTIFICATES, by the parish officers signing and sealing the same, or one of them, shall make oath before the justices who allow the same, that he saw the parish officers sign and seal the certificate, and that the names of the witnesses attesting the same are of their own proper hand-writing; and the said justices shall also certify that such oath was made before them; and then such certificate shall be taken to be fully proved, and shall be evidence without further proof," &c.

8. By 5 G. 2. c. 29. "the overseers or other persons removing back any certificated persons shall be reimbursed such reasonable charges as they may have been put

to in maintaining and removing such persons, by the parish officers of the parish or place to which they are removed, the said charges being first ascertained by a justice of the peace of the county or place to which such removal shall be made, to be levied by distress," &c.

9. Certificates which have heretofore been signed by two persons only acting as churchwardens and overseers, to be valid, 51 G. 3. c. 80. § 1.

10. Not to affect prior decision in any court, *Id.* § 5.

11. Certificates of settlement made valid although the churchwardens, &c. were not sworn in, 54 G. 3. c. 107. § 1.

12. Such certificates to be valid if executed by the overseers of the poor of any township, &c. *Id.* § 3.

13. Not to affect settlements of persons for whose removal order was made before passing of act, *Id.* § 3.

14. Certificates of the settlement of poor persons, executed previous to 28 May, 1821, by one churchwarden, &c. for any parish, &c. for which two churchwardens, &c. had formerly been appointed, declared valid, 1 & 2 G. 4. c. 52. § 1.

15. Not to affect decisions already made, 1 & 2 G. 4. c. 52. § 2.

II.

Of granting Certificates.

12. The certificate act authorizes the whole body of the poor, of whatever denomination, and with whatever object, to leave their own and remove into any other parish, provided they can obtain the protection of a certificate, *Res v. St. Peter and St. Paul*, ii. pl. 691.

14. And therefore a certificate granted to an impotent person, who is sent to the workhouse situate in another parish, in a helpless state, for the purpose of being provided for, is as good as when given to a skilful and able-bodied person who wants employment, *Id. ibid.* ii. pl. 691.

15. It is in the discretion of the parish officers to grant or to refuse a certificate; and therefore, although the parishioner applying for it is clearly settled in the parish, and has an opportunity of beneficial employment in the parish to which he wishes to be certificated, yet the court will not issue a *mandamus* to the parish officers to grant it, *Res v. St. Ives*, ii. pl. 711.

16. And even if a person to whom they have granted a certificate lose it, they are not obliged, on this ground, to grant another, *Res v. Hayder*, ii. pl. 717.

17. Nor are the justices obliged ministerially

- to allow and sign a certificate granted by the parish officers; for they have a discretion to allow or to disallow it, if it be liable to objection, *Rex v. Wootton St. Lawrence*, ii. pl. 713.
18. The justices of peace may not only allow a certificate, but may "also attest it," *Rex v. Boston*, ii. pl. 709.
19. And a certificate which appears to have been legally allowed, shall be presumed to have been regularly attested, *Barleycroft v. Colcoerston*, ii. pl. 710.
20. And shall not be rendered invalid because it is misdirected; as, "To the churchwardens and overseers of the poor of the parish of Harwich, near Dover Court in the county of Essex, or to any or either of them," &c. *Rex v. St. Nicholas Harwich*, ii. pl. 712.
21. If one of the two persons attesting a certificate make his mark, the fact of his having signed is sufficiently attested by the justices certifying that the other witness swore that he was present and saw the execution of it, *Rex v. Ashton Keynes*, ii. pl. 714.
22. When a certificate is above thirty years old, an allowance written in the margin and signed by two justices is sufficient, although there is no certificate of the affidavit of one of the attesting witnesses, pursuant to 3 G. 5. c. 29. *Rex v. Farrington*, ii. pl. 719.
23. But unless a certificate be signed by the majority of the parish officers, though properly allowed and attested by two justices, yet it is not binding, *Rex v. Tunworth*, ii. pl. 715.
24. See also *infra*, *Rex v. Wymondham*, ii. pl. 723.
25. And therefore where a certificate was signed by only one churchwarden and one overseer, when at the time of granting it there were four churchwardens and two overseers of the parish, it was held void, *Rex v. Margam*, ii. pl. 718.
26. Where one of two churchwardens was also appointed overseer of the poor, a certificate of settlement signed by both is a nullity. *Rex v. St. Margaret, Leicester*, ii. pl. 726.
27. A parish certificate purported to be granted in 1761, by A., the only churchwarden, and B., the only overseer of the parish: held that it must now be taken to have been a good certificate, because it may be intended in favour of such an instrument, that by custom there was only one churchwarden in the parish, and that two overseers had been originally appointed, but that one of them died, and that the certificate was granted before the

- vacancy in the office was filled up, *Rex v. Cateby*, ii. pl. 727.
28. The certificate also must be signed by the churchwarden and overseers of the township, parish, or place granting it; and therefore a certificate granted by some of the parish officers of a parish consisting of several hamlets, and having separate overseers, although they therein describe themselves as officers of the parish at large, may be explained by evidence, that they were only officers of the hamlet in which the pauper was settled, *Rex v. Samborn*, ii. pl. 721.
29. The words of a certificate promising to receive back the person certificated "when requested," mean when legally requested, viz. by an order of two justices when such person becomes actually chargeable, *Rex v. St. Mary Westport*, ii. pl. 720.
30. A certificate not delivered to the parish officers pursuant to the statute 8 & 9 Will. 5. c. 30. is of no effect, *Rex v. Wensley*, ii. pl. 722.
31. A certificate must be signed by a majority of the parish-officers *de facto*, and must be directed to one parish in particular, *Rex v. Wymondham*, ii. pl. 723.
32. A certificate directed to "the parish of The Holy Trinity, or any other parish in the city and county of Coventry," will operate on delivery to the parish of St. John the Baptist in the said city; for by 8 & 9 Will. 5. c. 30. such certificate need not be directed to any particular parish, *Rex v. Ellington*, ii. pl. 724.
33. A certificate granted by one overseer alone for a township is void, for the statute 13 & 14 Car. 2. c. 12. requires at least two for every place; and of course gives no security to the certificated parish against the gaining of a settlement there by the party named therein; such certificate not being made pursuant to the statute 8 & 9 Will. 5. c. 30. which requires it to be made, "by the churchwardens and overseers, or the major part, or by the overseers where there are no churchwardens," *Rex v. Clifton*, ii. pl. 725.
- But see *ante*, pl. 9, &c.

III.

The Effect of a Certificate.

34. A Certificate, though regularly signed, allowed, and attested, is of no effect unless properly delivered; for the statute 8 & 9 Will. 5. c. 30. expressly requires, that the person coming into the certificated parish "shall at the same time procure, bring, and deliver it, to the churchwardens or overseers of the parish or place where such

- person shall come to inhabit," *Res v. St. Nicholas*, ii. pl. 712.
35. As therefore this act requires a delivery of the certificate at the time the pauper goes into the certificated parish, a delivery at any time after is not sufficient; for the withholding it for any time may be the means of introducing a fraud on the certificated parish, *Res v. Wensley*, ii. pl. 722.
36. The parish of *Menwith* granted a certificate to the pauper, directed to the parish of *Road*, and the pauper, after a residence there for many years, got back the certificate, and went with it to another parish in the same township, where he had purchased a freehold, and delivered it to the parish officers there, and it was held, that the last parish was not bound by the delivery of the certificate, for that no other parishes could be concerned in this certificate, except the parishes of *Menwith* and *Road*; and that he had a right to go and live in his freehold without it, *Res v. Bishopcote*, ii. pl. 736.
37. A certificate derives its effect however from its delivery; and therefore a certificate of a prior date, though not delivered till after the removal of the pauper, is conclusive upon the removal by the parish granting it, *Res v. Buckingham*, ii. pl. 716.
38. But the delivery of a certificate shall not have the effect of vacating a settlement previously gained in the certificated parish, *Res v. Hindern*, ii. pl. 740.
39. If a certificate be properly delivered, the certificated persons cannot be removed until they become chargeable, *Little Kire v. Woodfall*, ii. pl. 739.
40. And a certificated person must have become actually chargeable before removal; for the strongest probability that they will become chargeable is no cause of removal, *Res v. St. Mary Westport*, ii. pl. 720.
41. Before the certificate act of 8 & 9 Will. 3. c. 30. a certificate was considered merely as a private agreement between the two parishes; and therefore if a man was sent to a parish in which he was last legally settled, the certificate did not bind the certifying parish; for a mere private agreement is not suffered to alter the law, *Harrison v. Lewis*, ii. pl. 738.
42. But now the parish certifying is bound by the certificate, *All Saints v. St. Giles*, ii. pl. 730.
43. And it concludes the parish giving it as to all the facts therein mentioned, *New Windsor v. White Walkham*, ii. pl. 751.
44. Therefore if parish officers give a certificate to a man and woman as husband and wife, they cannot afterwards controvert the fact of their marriage, *Res v. Headcorn*, ii. pl. 754.
45. And such a certificate is conclusive between the two parishes, although the woman is not the legal wife of the certificated man, *Res v. Ullesthorpe*, ii. pl. 748.
46. So also where a certificate was given, acknowledging "*Ann Clavier*, spinster, and the child or children that she now goeth with, to be our inhabitants legally settled in our parish," &c., it was held, that the certifying parish was bound to maintain the child, though born a bastard in another parish, *Res v. Ipsley*, ii. pl. 738.
47. And it makes no difference, though such a certificate was procured at the desire of the parish where the parties reside, provided it is not fraudulent, *Res v. Totest*, ii. pl. 739.
48. It was formerly held, that a certificate was binding on the parish certifying, against all other parishes whatever, *Hemton v. St. Mary Aze*, ii. pl. 741.
49. But it is now held, that a certificate only binds the certifying parish as to that parish to which it is directed, and leaves it, as to all other parishes, as they were before the certificate act was made, *All Saints v. St. Giles*, ii. pl. 750.
50. A certificated person therefore may gain a settlement in a third parish, and thereby avoid the certificate, *Res v. Pelham*, ii. pl. 732.
51. As, if the son of a certificated person, born in the parish to which his parents came by certificate, is hired and serves for a year in a third parish, *Res v. Horsley*, ii. pl. 737.
52. So also if a certifying parish bind the son of a certificated man apprentice in a third parish, *Res v. Siltou*, ii. pl. 59.
53. So also if he gain a settlement in the certificated parish, by either of the two ways pointed out by the 9 & 10 Will. 3. c. 11. *Res v. Sherborne*, ii. pl. 735.
54. But the son of a certificated person cannot gain a settlement in the certificated parish by apprenticeship, although he lives in it under the indentures for more than 40 days after his father's death; for the statute excludes all those who come into the parish under a certificate, *Res v. Alfreton*, ii. pl. 596.
55. But although it is now settled, that a certificate is only conclusive upon the parish granting it, with respect to that parish to which it is granted, yet it is *prima facie* evidence as to other parishes, *Res v. Lubbenham*, ii. pl. 741.
56. Not only the persons mentioned in the

certificate, but all *legitimate children* born while it continues in force, are virtually included therein, *Rex v. Sherborne*,

ii. pl. 733.

57. Therefore where the son of a certificated person, born after the certificate granted, when he had attained 20 years of age, was hired for a year, and served for a year in the certificated parish, yet being virtually included in the certificate, he does not gain a settlement by such hiring and service, *Rex v. Bray*,

ii. pl. 735.

58. Same point, *Buckingham v. Maids Moreton*,

ii. pl. 735 n.

59. So, where a son was born in the certificated parish, under the certificate, and was bound an apprentice in the parish, and his parents died *six months* before the expiration of his time, it was held that he did not gain any settlement in the parish, although he inhabited therein more than 40 days after the death of those to whom the certificate had been given, *Rex v. Alfreton*,

ii. pl. 596.

60. A certificate granted to a person "and his family" *generally*, only includes the certificated man, his wife, and those children who live with him; but does not extend to grandchildren, for grandchildren are not a part of his *family*, *Rex v. Darlington*,

ii. pl. 742.

61. See also *Rex v. Heath*,

ii. pl. 762.

62. For in such case a *second generation* is not within the meaning and protection of the act, *Rex v. Alfreton*,

ii. pl. 596.

63. But if a certificate be granted to *A.* and *B.*, his wife, and to *Edward* and *Thomas* their children, and *Edward* marries and has a son, such *grandson* is within the certificate, until emancipated, not as the grandson of *A.*, but as the son and part of the family of *Edward* named in the certificate, *Rex v. Batheaston*,

ii. pl. 747.

64. But it extends to a wife, though the marriage was subsequent to the granting of the certificate, *Rex v. Hampton*,

ii. pl. 744.

65. For the 8 & 9 W. 5. c. 30. extends not only to the certificate-man himself, but likewise to all his family, and all his children, whether born before or after the certificate, *Rex v. Sherborne*,

ii. pl. 733.

66. And if a certificate be granted to *A.*, and to *B.*, *C.*, and *D.*, his children *by name*, the residence of *B.* the son and his children in the certificated parish, is protected by it, although he afterwards marry and live separate from his father, *Rex v. Testerton*,

ii. pl. 743.

67. And therefore, where a certificate was granted to *A. B.*, his wife, and children *by name*, it was held that the *grandson* of

A. B. could not gain a settlement by hiring and service in the certificated parish; for where the son of a certificated person is mentioned in the certificate *by name*, his family, until they are emancipated, are within the protection of it, not indeed as the grandchildren of the principal person mentioned in the certificate, but as the family and children of the son of such principal person, *Rex v. Batheaston*,

ii. pl. 747.

68. But a certificate granted to a father, mother, and two younger children by name, does not extend to an elder child who maintained himself in the father's house at the time, and whom the parish did not intend to remove, *Rex v. Storrington*,

ii. pl. 748.

69. Nor does a certificate agreeing to receive the person therein stated to be an unmarried woman, and the child of which she was then pregnant, and all other children she might afterwards have, extend to a natural child born several years afterwards, *Rex v. Mathon*,

ii. pl. 746.

70. The settlement of a son, coming into a parish with the father under a certificate, as part of his father's family, not having before gained any settlement of his own, shifts with the settlement of the father in the certificated parish, though such son were named in the certificate, *Rex v. Leek Wotton*,

ii. pl. 749.

71. A pauper may be removed from a parish where he is residing under a certificate, to a parish in which he gained a settlement before the granting of the certificate, and need not of necessity be removed to the certifying parish, *Rex v. Saint Martin ad Oak*,

ii. pl. 750.

72. Parish certificate granted to *T. C.* and *J.* his wife, engaging to receive them, *their child or children born, or to be born*, only extends to a son, born at the time of granting the certificate, so long as he continues part of his father's family; therefore where the son married and resided with his family, apart from his father, in the certificated parish, held that his apprentice gained a settlement by serving him in the said parish, *Rex v. Thwaites*,

ii. pl. 768.

73. The son of a certificated person who is not named in the certificate, upon the death of his father (being then resident with his mother) was bound apprentice in the certifying parish, left his father's family, and served in that parish under the indentures for some years, and then returned, with his master's consent, to serve a person in the certified parish, where his mother and family resided under the

certificate, and served that person until the expiration of his indentures, at which time, being of the age of 21, his mother still residing in the parish, he hired himself to the same person for a year, and served that and three successive years in the certified parish: held that he gained a settlement by such hiring and service, *Rex v. Morley*, ii. pl. 769.

IV.

The Continuance and Determination of Certificates.

74. A certificate continues until the parish granting it shew clearly some matter in discharge thereof; for the court will not presume such discharge from other facts, *Rex v. Warblington*, ii. pl. 759.
75. A certificate is discharged by the certificated person becoming chargeable, and being removed back to the certifying parish, *Rex v. Sudbury*, ii. pl. 751.
76. So also a certificate is discharged by an order of removal from a third parish, which also was certificated, to the certifying parish, *Rex v. Birdham*, ii. pl. 757.
77. A certificate is also discharged by the certificated person abandoning the certificate, by voluntarily leaving the parish to which he was certified, *Rex v. Newington*, ii. pl. 760.
78. So a certificate is avoided by a master and his apprentice removing into another parish, *Rex v. Spotland*, ii. pl. 753.
79. But the absence and circumstances must be such as clearly shew that he had no intention of returning to the certificated parish, and that he meant to waive and desert the certificate, *Rex v. Taunton St. Mary Magdalen*, ii. pl. 752.
80. Therefore where the pauper voluntarily left the parish to which she was certified, but voluntarily returned again to the same house in the certificated parish, and to a branch of the same family with whom she had lived under the certificate; it was held, that the certificate was not abandoned, though she had been absent seven years, and had several times been hired and served for a year in the certifying parish, *Rex v. Keel*, ii. pl. 755.
81. But LORD MANSFIELD was first of opinion that the pauper in this case returned independently, and *sui juris*, rather than to her old house and parish under the certificate, *ibid.*; and LORD KENYON, in *Rex v. Heath*, *ibid.*, it seemed to him that LORD MANSFIELD's first thoughts were best, *Rex v. Heath*, ii. pl. 762.
82. So where the son of a certificated person served a year under a yearly contract,

in the parish granting the certificate, and then returned under age to his father's house for a short time, and then served another year with another master under a yearly hiring in the certificated parish, it was held, on the authority of the above case of *Rex v. Keel*, that he did not thereby gain a settlement in the latter parish, *Rex v. Ingworth*, ii. pl. 764.

83. And see *Rex v. Collingburn Ducis*, ii. pl. 70.
84. And where a certificated man and his wife returned to the certifying parish, and even continued there until they died; but left his son and his family in the certificated parish, his lordship strongly inclined to think that it was not an abandonment of the certificate; for that as his son was left behind, it was a sort of pledge that the certificate was not intended to be abandoned: but this point was not decided, *Rex v. Darlington*, ii. pl. 742.
85. And it seems that a certificate is not discharged by the death of a husband and wife to whom it was granted, when they leave a surviving son, born under the certificate an apprentice in the certificated parish, *Rex v. Alfreton*, ii. pl. 596.
86. So where the son of a certificated man left his father, served a year in the certifying parish, part of a year in a third parish, and then returned to his father's house in the certificated parish, and, while residing there, served a person two years under a yearly hiring, paying his father for his board and lodging; it was held, that the certificate was not thereby abandoned, *Rex v. Ingworth*, ii. pl. 764.
87. But where a certificated person returned to the certifying parish, and remained there 18 years, during which time he had a son born, it was held that this was a desertion of the certificate, and that such son was capable of gaining a settlement by hiring and service in the certificated parish, *Rex v. Frampton-upon-Severn*, ii. pl. 754.
88. And in general, if a pauper quit the parish to which the certificate is granted, without any intention of returning, the certificate is at an end, *Rex v. Newington*, ii. pl. 760.
89. And a certificate discharged by the certificated man leaving the certificated parish with all his family, and taking up his residence in another parish, does not revive upon his return thereto after an absence of two years, *Rex v. St. Michael's, Coventry*, ii. pl. 761.
90. But a person cannot gain a settlement by hiring and service with the son of a certificated man, who continues to reside in the certificated parish with his mother

- after the father's death as part of her family, although the son were of age, and carried on business for himself; for such circumstances do not amount to an emancipation, *Rex v. Sowerby*, ii. pl. 765.
91. But where the son of a certificated person (not named in the certificate except under the general appellation of the father's family) marries and lives in a house of his own in the certificated parish, he ceases to be under the protection of the certificate as part of his father's family, and an apprentice may gain a settlement by serving such person in the certificated parish, *Rex v. Mortlake*, ii. pl. 766.
92. A certificate may be discharged as to any of the persons mentioned in it, as if the son of a certificated person marry and live in a house of his own, for which he is rated and pays taxes, *Rex v. Heath*, ii. pl. 762.
93. Or if after he is of age he marries, and removes from his father's house, and lives separate with his wife and family in another house in the same parish, *Bugden v. Amptkill*, ii. pl. 60.
94. A second certificate to a pauper discharges the former one given by the same parish, *Rex v. Birdham*, ii. pl. 757. Same point, *Rex v. St. Peter, in Derby*, ii. pl. 758.
95. A certificate to one of several consolidated parishes is discharged by the certificated person being hired and serving for a year in another of the parishes, *Rex v. Wymondham*, ii. pl. 763.
96. For a certificate does not prevent a settlement being good in a third parish, *Rex v. Pelham*, ii. pl. 732.
97. If therefore an apprentice be bound to a certificated man in one parish, after he has purchased an estate in another, he gains a settlement by inhabitation in such other parish for 40 days under the indentures, *Rex v. Bishopside*, ii. pl. 736.
98. A certificate is also determined, by the certificated person taking a lease of a TENEMENT of the value of 10*l.* in the certificated parish.
99. So also renting a tenement of 10*l.* a year, and 40 days' residence, will avoid a certificate granted after the taking and before the expiration of the 40 days, *Rex v. Findern*, ii. pl. 756.
100. A certificate may also be determined by executing some annual office in the parish, being legally placed in such office.
See SETTLEMENT BY SERVING AN OFFICE, ii. p. 173 to 195.
101. Parol evidence may be given of the existence of a certificate, *Rex v. St. Maurice*, ii. pl. 770.
102. The bare production of a certificate of 30 years' date is sufficient, without giving any account of it, *Rex v. Ryton*, ii. pl. 771.
103. The manner in which apprentices to certificated persons may gain settlements in avoidance of the certificate, ii. p. 467 to 481.
104. A parish certificate of more than 30 years' date acknowledging the pauper's grandfather and father to belong to the appellant parish, produced by a rated inhabitant who was overseer of the respondent parish, was held to be evidence, though it was objected that some account should be given of it, and that the witness was not competent to give that account, and it seems, that, if necessary, he might be examined as to the custody, *Rex v. Netherthong*, ii. pl. 778.

CERTIORARI.

- By 5 G. 2. c. 19. "no *certiorari* to remove any conviction, judgment, order, or other proceedings before any justice of the peace or the general or quarter sessions, shall be allowed, unless the party applying enter into a recognizance with sureties in 50*l.* to prosecute the same at his own cost and charges with effect," &c. &c.
- By 15 G. 2. c. 18. "no such *certiorari* shall be granted unless applied for in six calendar months after such proceedings had or made, and unless it be duly proved on oath, that the party suing forth the same hath given six days' notice thereof in writing to the justice or justices, or two of them, before whom such proceedings have been, to the end that they may shew cause against the issuing such *certiorari*."
- The six days' notice required by 15 G. 2. c. 18. must be given before making the motion for a rule to shew cause why *certiorari* should not be granted, *Rex v. Justices of Glamorganshire*, ii. pl. 102.
- When it is intended to move for a *certiorari* to remove an order of sessions confirming an order of removal, six days' notice of such motion must be given to the justices pursuant to 15 G. 2. c. 18. notwithstanding the order of sessions was made subject to the opinion of this court on a case to be stated, which case was afterwards stated and settled by the justices at sessions, *Rex v. Justices of Sussex*, ii. pl. 105.
- And such *certiorari* must be moved for within six calendar months after making the order of sessions, and not within six calendar months after settling the case, *Rex v. Justices of Sussex*, ii. pl. 105.
- All orders of justices may be removed.

certiorari; for the court of king's bench having a superintendency over all courts of an inferior criminal jurisdiction, may, in the plenitude of its power, award a *certiorari*, unless restrained by the express negative words of the legislature,

- ii. pl. 1018.
7. The statutes which gave a power to sessions "to hear and finally determine an appeal," do not thereby take away the *certiorari*; for the *certiorari*, being a writ beneficial for the subject, cannot be taken away without express words, *Rex v. Jukes*, ii. pl. 1028.
8. It is a general rule, that where the law has limited an appeal against an order, such order cannot be removed until after the time of appealing, *Case of the Borough of Warwick*, i. pl. 69.
9. And if any order be removed before appeal, it shall be sent down again, ii. pl. 1019.
10. And where a *certiorari* was prayed, pending a sessions, and the party had made his election by appealing thereto, the court refused to issue the writ, *The Warwick case*, ii. pl. 1022.
11. But if the time limited for appealing be expired, that case is not within the rule, *Rex v. Shellington*, ii. pl. 1020.
12. But a *certiorari* lies to remove an appointment of overseers before appeal, under the 43 Eliz. unless the appeal be lodged, *The Warwick case*, i. pl. 69.
13. Where an order of justices is made, and there is but one party who has a right to appeal, as in an appointment of overseers, and he waives his privilege of resorting to the sessions, and elects to go to the king's bench, a *certiorari* lies for removing the order, if there be no objection to the parties being received; but where there are two parties, and the time of appeal is fixed, as in the case of removals, it is not reasonable to grant a *certiorari* till the time has elapsed, *Rex v. Harman*, ii. pl. 1023.
14. Therefore where an appeal is given, but no time is limited in which it is to be brought, the writ may be sued out before appeal, *Rex v. Harman*, ii. pl. 1023.
15. But as the 17 G. 2. c. 18. has now limited the appeal to the next sessions, such *certiorari* does not lie until after the next sessions, as it would prevent the appeal, *Rex v. Holditch*, i. pl. 71.
16. But it seems that the person who has the right of appealing may remove it before the next sessions, *Rex v. Holditch*, ii. pl. 1024.
17. So a *certiorari* lies after neglect to appeal to the next sessions, and appeal dis-

missed to a subsequent sessions, *Rex v. Hanley*, ii. pl. 1025.

18. And on an appointment of overseers being removed, the court will hear the merits of the case on affidavit, *Rex v. Great Marlow*, i. pl. 74.
19. A *certiorari* will not lie to remove a poor-rate, *Rex v. Uthaxeter*, i. pl. 305.
20. Although the party can have no appeal against the rate, *Rex v. Justices of Shrewsbury*, i. pl. 306.
21. But a *certiorari* will lie to remove an order of justices in sessions respecting a poor-rate, *Anonymous*, i. pl. 307. Same point, *Anonymous*, ii. pl. 1018.
22. An order of bastardy removed by *certiorari* in due time, may be quashed for objections on the face of it, without a previous appeal to the sessions, *Rex v. Stanley*, i. pl. 618.
23. A *certiorari* to remove an order of removal appealed against may be directed to the sessions, and returned by them, *Rex v. Warminster*, ii. pl. 1021.
24. If a conviction be returned to the sessions, the justices may return a copy of it to a *certiorari*, *Rex v. Baton*, ii. pl. 1021 n.
25. Several orders may be removed by one *certiorari*, *Rex v. Harman*, ii. pl. 1023.
26. The return to a *certiorari* need not be under seal, *Rex v. Pickersgil*, ii. pl. 1026.

CHARGES.

See Costs.

CLAY PITTS.

See POOR'S RATE, vii.

CLERGY.

1. A clergyman, though he has no cure of souls, is privileged from being chosen overseer, *Anonymous*, i. pl. 12.
2. It is said, that parish-apprentices may be put to clergymen, and that they are chargeable to the putting out apprentices, i. pl. 699.

COAL-MINES.

See POOR'S RATE, vii.

1. The occupiers of coal-mines are rateable to the poor; for coal-mines are expressly mentioned in 43 Eliz. c. 2.
2. So the lessee of a coal-mine is liable to be rated to the poor, though he derive no profit from the mine, *Rex v. Parrott*, i. pl. 202.
3. So a coal-mine is rateable, although the owner uses the coal it produces in the working of an iron-mine, which is not rateable, *Rex v. Cunningham*, i. pl. 215.

COMMITMENT.

1. A commitment under the *vagrant act* is a commitment in execution, *Rex v. Brooke*, 2 T. R. 190.
2. And therefore such a commitment is bad, unless it be preceded by a conviction, *Rex v. Rhodes*, 4 T. R. 220.
3. A commitment of an apprentice for running away from his master in the disjunctive, viz. "as an apprentice or servant, for disobeying his indentures or articles, is bad, *Rex v. Evered*," i. pl. 168. See JUSTICES; OVERSEERS; SOLDIERS.

CONSTABLE.

1. By 13 & 14 Car. 2. c. 12. § 18. "constables, headboroughs, and tythingmen, out of purse by relieving the poor, conveying them with passes, and by carrying rogues, vagabonds, and sturdy beggars to houses of correction, shall be reimbursed by a rate to be made for that purpose."
2. But by 9 G. 1. c. 7. § 2. "no officer of any parish, except upon sudden and emergent occasions, shall bring to the account of the parish any monies that he shall give to any poor person of the same parish, who is not REGISTERED."
3. By 24 G. 2. c. 44. "no action shall be brought against any constable or other officer, or against any person acting in his aid, until the forms prescribed by the act have been complied with."
4. Overseers and churchwardens may be indicted for refusing to make a rate to reimburse constables, &c. *Rex v. Barlow*, i. pl. 369.
5. By 17 G. 2. c. 5. § 2. "the duty of constables respecting persons who shall run away and leave their families chargeable to the parish, described."
6. By 18 G. 3. c. 19. § 4. "every constable, headborough, or tythingman shall, every three months, and within fourteen days after he shall go out of office, deliver to the overseers an account in writing, signed by him, of all sums expended by him on account of the parish."
7. By 18 G. 3. c. 19. § 4. "the overseers shall, within the next 14 days after the account delivered, lay the same before the inhabitants, and, if approved, shall pay the same out of the poor-rates."
8. By 18 G. 3. c. 19. § 4. "if the account shall be disallowed, the overseers shall deliver it back to the constable, who may exhibit the same to a justice of the peace, giving reasonable notice thereof to the overseers; and the justice shall hear and determine on the objection made to the account, and

settle the sum due, and enter the same in the account, and sign his name thereto; and then the overseers are authorized to pay the same out of the monies raised by the poor's rate."

9. But by 18 G. 3. c. 19. § 5. "the overseers may appeal against such account to the next general or quarter sessions."
10. By 33 G. 3. c. 55. "constables may be fined in any sum not exceeding 40s. for any neglect of duty or for any disobedience of any lawful warrant or order of any justice of peace."

CONVENTICLES.

1. A meeting-house used only for the purposes of religious worship, and from which the preacher derives no profit either by inhabitation or letting out the pews, is no rateable to the poor, *Rex v. Southwark*, i. pl. 151.
2. Nor a house which was before rateable converted into such a conventicle, *same case*, i. pl. 155.
3. And therefore a quakers' meeting-house the support and expence of which are paid by voluntary contribution, is not rateable although one of the rooms in the basement story is occupied by the door-keeper who has a salary allowed him, *Rex v. Woodward*, i. pl. 90.
4. But a private building always used as chapel, and by contract never to be used for any other purpose, is, if a profit made of it, rateable to the poor, *Rex v. Hyde*, i. pl. 18.

CONVICT.

See ATTAINDER.

CORPORATION.

1. By 45 Eliz. c. 2. § 8. "the magistrates every corporation in the kingdom, be justices of the peace, shall have the same authority in matters respecting the police within the limits and precincts of their respective jurisdictions, as well out of sessions as at their sessions, as by this act given to county justices; and no other justice shall meddle there."
2. By 43 Eliz. c. 2. "every alderman of the corporation of London shall have the same authority as is given to one or two justices by this act."
3. By 43 Eliz. c. 2. § 9. "if a parish lie two counties, or part within a corporation and part without, the magistrates and justices of each place respectively, shall only deal and intermeddle in so much of the parish as lies within their several jurisdictions."
4. The above clauses do not confine the

- pointment of overseers to the mayor or other head officer of a corporation, *Rex v. Butler*, i. pl. 22.
5. Nor can one magistrate of a corporation and one justice of a county, join to do an act required to be done by two of them respectively, *Rex v. Butler*, i. pl. 22.
6. But *quære*, if there should be only one justice in a county, or magistrate in a corporation, whether such one may not act in cases where two are required, *Ibid.* i. pl. 22.
7. By 9 G. 1. c. 7. § 3. "justices for a county living in any city that is a county of itself situated within the county at large, may make orders," &c.
8. But by 28 G. 3. c. 49. "the above act shall not authorize such justices, to intermeddle in matters within the jurisdiction of the corporation in which they reside."
9. And a corporation having sessions of its own, an appeal from a poor's rate made in a borough must be to the borough sessions, *Rex v. Taunton*, i. pl. 283.
10. A poor's rate made by magistrates of a corporation, cannot be allowed by justices for a county, *Rex v. Folly*, i. pl. 86.
11. For there is a clause in the 43 Eliz. c. 2. that says, justices and sessions of boroughs shall have power exclusive of the county, *Rex v. St. Mary, Taunton*, i. pl. 282.
12. The parishes in a corporation cannot be rated in aid by county justices, *Rex v. St. Benedict*, i. pl. 416.
13. A corporation may be rated to the poor in respect of a toll, although part of such toll is to maintain the mayor, *Rex v. Wickham*, i. pl. 140.
14. So a corporation seised of lands in fee for their own profit are, within the meaning of the 43 Eliz. c. 2. inhabitants or occupiers of such lands, and in respect thereof liable in their corporate capacity to be rated to the poor, *Rex v. Gardner*, i. pl. 167.
15. Where a corporation was seised in fee of certain uninclosed lands, which was stocked with the cattle of the resident burgesses, or the widows of such, who alone were permitted by the burgesses to claim such right, and also by poor parishioners, who were admitted to such enjoyment from charity, and such lands were altogether omitted out of the poor rate; and the court of sessions, on appeal by one who had given notice of his objection to the parish officers, and to the corporation, as the party interested under 41 G. 3. c. 23. § 6. quashed the rate, the court of king's bench confirmed the order of sessions, *Rex v. Aberavon*, i. pl. 214.
16. Where a corporation were seised in fee of lands, which by the custom were annually meted out under their control by a leet jury, according to a certain stint, to such of the resident burgesses who chose to stock the same; they paying 19s. 4d. to each of the other burgesses who did not stock; it was held, that the burgesses who so stocked were tenants in common of the lands so occupied by them, and, as such occupiers, were liable to be rated for the same, *Rex v. Watson*, i. pl. 210.
17. So a barge-way and toll-gate purchased by the corporation of London, by virtue of an act of parliament for more effectually completing the navigation of the Thames, and empowering the corporation to levy tolls and duties towards the charges of the navigation, are rateable to the poor, *Rex v. Mayor of London*, i. pl. 196.
18. But a corporation erected by act of parliament for the purpose of managing a navigation, and authorized to take certain tolls, the whole of which are directed to be applied to public purposes, is not rateable to the poor in respect of such tolls, *Rex v. Saller's Swice Navigation*, i. pl. 198.
19. Nor can a corporation, such as the governors of St. Bartholomew's Hospital, be rated to the poor; for the members of it cannot be considered as occupiers, *Rex v. Bartholomew's Hospital*, i. pl. 161.
20. So if a corporation demise part of its landed property to certain persons for a term of years at a certain yearly rent, for the purpose of erecting an hospital for lunatics, as is the case with St. Luke's Hospital, it cannot be rated to the poor; for neither the lessees, who are mere nominal trustees, nor the servants, who are mere assistants to the afflicted patients, nor the patients who are the unhappy objects of the charity, can be considered as the occupiers, *Rex v. St. Luke's*, i. pl. 157.
21. By 17 G. 2. c. 38. § 5. "where corporations or franchises have not four justices, persons grieved may appeal to the sessions of the county in which such corporation is situated."
22. See also 18 G. 3. c. 19. § 6.
23. By 19 Car. 2. c. 4. § 3. "the magistrates of a corporation may remove prisoners, and make order for the relief and maintenance of the poor."

COSTS.

1. By 17 G. 2. c. 38. "on appeal against an appointment of overseers, the justices may order the party for whom such appeal may be determined reasonable costs, in the same manner as they are empowered to do by 8 & 9 Will. 3. c. 30.

2. Same point as to poor's rate, 8 T. R. 583.
3. But if a person give notice of his intention to appeal against a poor rate, but do not enter his appeal, the sessions cannot award costs to the other party under 17 G. 2. c. 38., *Rez v. Justices of Essex*, ii. pl. 1017.
4. By 7 Jac. 1. c. 5. "on an action against any parish officer, if the verdict, &c. shall be in his favour, he shall have double costs."
5. And by 24 G. 2. c. 44. "if against them, they shall pay costs to the plaintiff."
6. If trespass be brought against overseers after a voluntary delivery of goods, it is vexatious, and they shall have treble damages and costs, *Oakley v. Salter*, i. pl. 351.
7. The statutes 7 Jac. 1. c. 5. and 21 Jac. 1. c. 12. giving double costs to parish officers, do not extend to ecclesiastical matters, *Kitchwall v. Smith*, i. pl. 355.
8. And therefore if a parish officer falsely present a man as occupier of lands, he is not entitled to double costs, on being acquitted in an action on the case brought against him on this charge, *Stone v. Lingar*, i. pl. 356.
9. An indictment will lie for non-payment of costs, ordered by the sessions on the dismissal of an appeal from a poor's rate, *Rez v. Byce*, i. pl. 359.
10. To entitle an overseer, &c. to double costs, under 7 Jac. 1. c. 5., it must be certified by the judge who tried the cause, that he was acting in the execution of his office, *Grindley v. Holloway*, i. pl. 362.
11. By 18 G. 3. c. 19. § 5. "the sessions on appeal against a constable's accounts, may award and order to the party for whom such appeal shall be determined reasonable costs, in the same manner as empowered by 8 & 9 Will. 3. c. 30."
12. By 15 G. 3. c. 82. § 7. "the justices may award costs in cases of bastard children born in hospitals," &c.
13. By 20 G. 2. c. 19. § 5. "the sessions on appeal against an order of apprenticeship, may give and award such costs to any of the respective persons appellant or respondent as they shall judge reasonable, not exceeding 40s."
14. By 6 G. 3. c. 25. § 5. respecting apprentices running away, the sessions may give relief and costs to the parties appealing or appealed against, as they shall judge proper and reasonable."
15. By 8 & 9 Will. 3. c. 30. § 5. "the justices at their general or quarter sessions, upon any appeal concerning settlement of the poor, may award and order to the party for whom and in whose behalf such appeal shall be determined, or to whom notice of appeal shall have been given, such costs and CHARGES in the law as they shall think reasonable."
16. By 8 & 9 Will. 3. c. 3. § 3. "and if the person ordered to pay such costs shall live out of the jurisdiction of the court, the justice where such person shall inhabit shall, after a request, and copy of the order served, &c. grant a warrant to levy the same by distress and sale," &c.
17. By 9 G. 1. c. 7. § 9. "if, upon appeal against an order of removal, the sessions shall determine in favour of the appellant, that the pauper was unduly removed, the justices may at the same sessions order and award to such appellant, so much money as shall appear to the justices to have been reasonably paid by the parish appealing, towards the relief of the pauper, between the time of the undue removal and the determination of the appeal. To be recovered as directed by 8 & 9 Will. 3. c. 10."
18. By 35 G. 3. c. 101. "the justice who suspends an order of removal or a vagrant pass, may direct the officers of the parish to which the removal is to be made, to pay the charges ascertained by him of such suspension, and after their refusing so to do, and within three days after demand thereof, if no notice of appeal be given may direct the same to be levied by distress, with 40s. costs; but if such cost and charges exceed 20s., the party grieved may appeal to the next general quarter sessions."
19. Before the above statute 9 G. 1. c. 7. the allowance of costs upon an appeal from an order of removal, was in the discretion of the sessions, *Rez v. Justices of Nottingham*, ii. pl. 101.
20. But now the Court of King's Bench will grant a *mandamus* to the sessions, commanding them to allow such costs as charges as appear to them just and reasonable, *St. Mary Nottingham v. Kirklinton*, ii. pl. 101.
21. An order of sessions directing costs as charges to be paid need not state the sum expended, *Maidenbradley v. Wallingford*, ii. pl. 101.
22. The sessions cannot order costs on a mere adjournment of an appeal, *Rez Stansfield*, ii. pl. 101.
23. Nor can they direct the costs to attend the event of another presumed appeal, *Rez v. Great Chart*, ii. pl. 101.
24. If a sessions-case be sent down to be stated, and the prosecutor abandon when it is returned, the court of king

bench will discharge his recognizance for the costs; but if he dispute the amended order, they will not, *Rex v. Edgeworth*, ii. pl. 1016.

25. By 5 G.2. c. 19. "the person removing an order must enter into a recognizance of 50*l.* to prosecute the *certiorari* at his own costs and charges with effect, without wilful delay, and to pay the party in whose favour the order was made, within a month after the same shall be confirmed, his full costs," &c.

26. By 32 G.3. c. 45. § 6. "the sessions shall from time to time direct, what rates and allowances *per mile* or otherwise, shall be made for passing vagrants."

CUSTOMARY HIRING.

See SETTLEMENT BY HIRING AND SERVICE.

CUSTOMS.

1. A custom-house officer is exempted from serving the office of overseer, though he has not his writ of privilege at the time, *Rex v. Warner*, i. pl. 16.

2. See also *Raymond v. St. Botolph's, Aldgate*, i. pl. 11.

D.

DAIRY.

1. Renting a dairy is renting a tenement, so as to give the tenant a settlement, *Rex v. Piddletrenthide*, ii. pl. 137.

2. So is renting 20 cows at 3*l.* 10*s.* a year each, to be fed in certain grounds belonging to the owner, exclusive of any other cattle, *Rex v. Tolpudde*, ii. pl. 139.

3. Renting a dairy (including the cows and their pasture) at above 10*l.* a year in value, will not confer a settlement, if the annual value of the lands on which the cows were to be depastured be under 10*l.* a year, *Rex v. Minworth*, ii. pl. 145.

DEATH.

1. The death of the master of an apprentice so far discharges the apprentice from his indentures, that if he afterwards hire himself as a servant to another master for a year, and serve a year, he thereby gains a settlement, *Rex v. Eakring*, ii. pl. 541.

2. But if, after his master's death, he continue with his widow, and she assign him over to another master, he gains a settlement under the indentures by serving such second master, although his first master's widow does not administer, and receives a

premium for the assignment, *Rex v. East Bridgford*, ii. pl. 557.

3. But the instrument by which a widow and executrix assigns her husband's apprentice to a new master, must be stamped, *Rex v. St. Paul, Bedford*, ii. pl. 604.

4. But, generally speaking, the death of the master dissolves the contract of apprenticeship, i. p. 539 to 544. And see title APPRENTICE.

DISSENTERS.

1. By 1 W. & M. c. 18. § 7. "persons dissenting from the church of England, who, on being chosen to the office of overseer, or to any other parish or ward office, shall scruple to take the oaths, may execute the office by deputy."

2. By 1 W. & M., c. 18. § 4. "dissenting ministers are exempted from serving the offices of churchwarden, overseer of the poor, and any other parochial or ward office."

3. Therefore a baptist preacher who has conformed to the statute is exempt, although with the profession of his ministry, he at the same time is engaged in the trade of a hop-merchant, *Kenward v. Knowles*, i. pl. 18.

DISTRESS.

1. By 43 Eliz. c. 2. § 10. "the penalty of five pounds imposed on justices for neglecting or refusing to appoint overseers, shall be levied by the churchwardens and overseers or any of them, by distress, by warrant from the quarter sessions."

2. By 17 G.2. c. 38. § 14. "the penalty of any sum not exceeding five pounds, nor less than forty shillings, is inflicted on every churchwarden and overseer who shall disobey the directions of this act, to be levied by distress and sale of the offender's goods, by warrant from the justices," &c.

3. By 43 Eliz. c. 2. § 4. "the churchwardens and overseers, or any of them, by warrant from two justices, may levy the monies assessed for a *poor's rate*, and all arrearages of the same, by distress and sale of the offender's goods; and, in defect of such distress, two justices may commit such offender to the common gaol until payment thereof."

4. And by 17 G.2. c. 38. § 7. "the goods of any person who is assessed and refuses to pay, may be distrained, not only in the place for which the assessment was made, but in any other place within the same county or precinct, if sufficient distress cannot be there found, on oath made before a justice of the peace."

5. By 17 G. 2. c. 38. § 11. "succeeding overseers may levy by distress, the arrears due in the time of their predecessors."
6. By 17 G. 2. c. 38. § 12. "the distress may be made on the goods of the succeeding tenant, in the same manner as if the preceding tenant had not removed, or as if the succeeding tenant had been originally rated and assessed to such rate; but the sum levied shall only be in proportion to the time such succeeding tenant has occupied the premises; which said proportion, in case of dispute, shall be ascertained by two justices of the peace."
7. And by 27 G. 2. c. 20. "the justices granting the warrant for such distress, shall therein order and direct the goods and chattels, so to be distrained, to be sold and disposed of within a certain time to be limited in such warrant, not less than four nor more than eight days."
8. By 27 G. 2. c. 20. "the officer making the distress shall deduct the charges from the sum levied, and after reserving the sum due, return the overplus to the owner."
9. By 28 G. 3. c. 49. "justices of adjoining counties may act."
10. By 33 G. 3. c. 55. § 3. "if sufficient distress cannot be found in the jurisdiction of the justice granting the warrant, on oath made thereof by one witness before any other justice, he may indorse the warrant, and thereby authorize the officer to make the distress in the jurisdiction of such justice."
11. *Working tools* in a shop may be distrained for the poor's rate, *Edgcomb v. Sparks*, i. pl. 256.
12. So also *money* may be distrained as well as goods, *East India Company v. Skinner*, i. pl. 257.
13. So also *wearing apparel*, although it be that which the party daily wear, may be distrained, *Bissert v. Caldwell*, i. pl. 256. (n.)
14. So also *beasts of the plough* are distrainable for the poor's rate, although there were other distrainable goods sufficient on the premises, *Hutchins v. Chambers*, i. pl. 264.
15. And in general all those *articles* which were protected from distress by the common law, which considers the goods taken as a *pledge*, may be distrained under any of those statutes which authorize the goods to be sold, *Edgcomb v. Sparks*, i. pl. 256.
16. As the daily wearing apparel of the wife and children of the party while they were in bed, *Bissert v. Caldwell*, i. pl. 256 n.
17. So also *beasts of the plough* are seizable under a distress for the poor's rate, although there are other distrainable goods of sufficient value on the premises, *Hutchins v. Chambers*, i. pl. 264.
18. A warrant to levy a poor-rate, directed to the constable of A., where the party had land, but no goods, was executed by the constable of A. in the adjoining parish of B., where the party had goods; and by Holt C. J., the levy was well made, *Hampton v. Lammas*, i. pl. 258.
19. But goods taken on a distress for a poor-rate for lands not in the occupation of the party rated, may be replevied though the sessions have confirmed the rate; for to assess a man for what he does not occupy is an excess of jurisdiction, *Milward v. Coffin*, i. pl. 266.
20. A distress cannot be made for non-payment of a rate made subsequent to the granting of the warrant, although the warrant is general, to distrain for such rates as are made during the year, *Tracey v. Talbot*, i. pl. 259.
21. But a distress may be levied on a warrant made before the term for which the rate is made is expired, *Charlewood v. Best*, i. pl. 261.
22. A distress cannot be made until the payment of the rate has been regularly demanded; for the 43 Eliz. c. 2. § 4. says it shall be made "on every one that shall refuse to contribute according as the shall be assessed," i. pl. 264.
23. And the party assessed must be summoned and heard, before a warrant of distress can issue to levy the rate, *Ree v. Benn*, i. pl. 265.
24. For the granting a warrant of distress to levy a poor rate, is a *judicial* and not merely a *ministerial* act, *Harper v. Carr*, i. pl. 271.
25. So the *personal representatives* of the party liable to pay the rate, ought to be summoned before a distress is made on the goods of their testator or intestate, *Steele v. Evans*, i. pl. 26.
26. A second distress for a poor's rate may be taken under the same warrant, although enough might have been taken on the first distress, *Hutchins v. Chambers*, i. pl. 266.
27. And if an *excessive distress* be made, the party may have recompense for the injury by a special action grounded on the statute of *Marlbridge*, *Hutchins v. Chambers*, i. pl. 266.
28. In an action of *replevin*, the justice who issued the warrant of distress need not be joined; but in a common action of *trespass*, in cases where the justice is a general jurisdiction, and the officer

- bound to obey his warrant, the justices must be included, 2 Bl. Rep. 1350.
29. The Court in one instance granted a *warrant* to justices, to assign a warrant of distress, *Rex v. Justices of Middlessex*, i. pl. 262.
30. But now this writ only lies commanding them to receive such informations and complaints, as have been or shall be laid before them against such persons as have neglected or refused, or shall neglect or refuse to pay the sum respectively assessed on them, by a certain rate or assessment of such a time for the relief of the poor, and to proceed thereupon to levy the said several sums, *Rex v. Benn*, i. pl. 269.
31. Nor will the Court grant it, if it appear that the direction of the statutes have not been complied with; as, if the rate was not published in the church on the *Sunday* next after it was allowed, pursuant to 17 G. 2. c. 3. § 1.; for in such case the rate is a nullity, and payment under it cannot be enforced, although the party has not appealed to the sessions, *Rex v. Newcombe*, i. pl. 268.
32. But the defect in the rate must be such as is radical, or destroys the rate itself; for a defect, as applied merely to the inequality of a rate, will not avoid the warrant of distress, *Hutchins v. Chambers*, i. pl. 264.
33. And if the party rated has not appealed to the sessions, the overseers cannot be guilty of trespass in distraining for the rate, although it is objectionable, *Durrant v. Boys*, i. pl. 270.
34. By 9 G. 3. c. 37. "the penalty inflicted on overseers for making payments to the poor in base coin, shall be levied by distress and sale."
35. *Qu.* Whether the penalty inflicted by 43 Eliz. c. 2. on an overseer for neglecting to attend the monthly meetings in the church, to consult with respect to the ordering of the poor, can be levied by distress until, on *personal notice* of his neglect, he has been *adjudged* guilty, *Rex v. Harman*, i. pl. 376.
36. The authority given to justices to grant a warrant of distress, does not take away the common mode of proceeding by indictment, for disobedience to the act of parliament, *Rex v. Robinson*, i. pl. 455.
37. By 5 G. 1. c. 8. "the penalty on persons running away and leaving their families chargeable to the parish, may be levied by distress."
38. By 13 & 14 Car. 2. c. 12. § 19. "so much of the goods, effects, and profits of land, of the *putative father* or *lewd mother* of a bastard child, as shall be ordered by two justices, may be seized by the parish officers towards the maintenance of the child, and the sessions may order them to dispose of the goods," &c.
39. By 8 & 9 W. 3. c. 50. § 5. "the penalty of 10*l.* imposed on refusing to take a parish apprentice, may be levied by distress and sale."
40. By 2 & 3 Ann. c. 6. § 18. "all penalties and forfeitures respecting apprentices put out to persons in the *sea-service*, to be levied by distress and sale."
41. By 28 G. 3. c. 48. § 11. "all penalties and forfeitures respecting apprentices put out to *chimney-sweepers*, shall be levied by distress and sale."
42. But by 28 G. 3. c. 48. § 12. "no warrant of distress shall issue under this act until six days after conviction, and an order served upon the offender to pay the penalty, costs, and charges."
43. By 3 G. 2. c. 28. "overseers shall be reimbursed such reasonable charges, as they may have been put to in maintaining and removing certificated persons, which said charges, when ascertained and allowed by a justice of the peace, shall be levied by distress and sale of the goods and chattels of the churchwardens and overseers of the parish, to which such certificate persons are removed."
44. By 5 Will. 3. c. 11. § 10. "the penalty of 5*l.* imposed on parish officers, for neglecting to receive a pauper regularly removed from another parish, shall be levied by distress and sale."
45. By 8 & 9 Will. 3. c. 3. "the sessions, on appeal from any order of removal, may award costs and charges to be paid by the person against whom the appeal is determined, to be levied by distress and sale of the goods of the person that is ordered to pay and ought to pay the same."
46. By 9 G. 1. c. 7. § 9. "the sessions may order the respondent parish, on an appeal against an order of removal, to pay so much as shall have been expended, between the removal and appeal, to be levied by distress and sale."

DOWER.

1. The widow of a man who dies seised of a house, gains a settlement by a residence of 40 days in right of her dower; but she cannot, by such an estate, communicate a settlement to a second husband, until dower be assigned, *Rex v. Painswick*, ii. pl. 627.
2. A widow, by residence during her *quarantine*, gains a settlement for herself, and for those of her children who are not emancipated, although by occasional sepa-

ration, they do not reside with her on the estate during the 40 days, *Rex v. Long Wittenham*, ii. pl. 55.

E.

EMANCIPATION.

See post, SETTLEMENT BY PARENTAGE, § iii.

ENGINE.

1. The profits arising from an engine or machine, erected in the street leading to and communicating with a house, for the purpose of weighing carriages and receiving toll thereon, are rateable to the poor, *Rex v. Inhabitants of St. Nicholas, Gloucester*, i. pl. 180.
2. The profits of the *London Bridge water-works*, are rateable to the poor, *Atkins v. Davis*, i. pl. 186 n.
3. A house, in which there is a *carding-engine* for manufacturing cotton, is rateable to the poor for the profits produced by working the machine, *Rex v. Hogg*, i. pl. 186.

ERROR.

1. By 5 G. 3. c. 19. "upon all appeals against orders or judgments of justices, the sessions may amend defects of form."
2. Therefore they may alter the name of the place of removal to the name of the place of settlement, if the error appear to have been the mistake of the clerk, *Rex v. Harrow on the Hill*, ii. pl. 933.
3. But they cannot amend an order in matter of substance, *Rex v. Great Bedwin*, ii. pl. 934.
4. As if it do not distinctly appear upon the face of an order of removal, that the justices had jurisdiction, *Rex v. Chilvers Coton*, ii. pl. 903.
5. The court of king's bench will not quash an order of sessions, except for error of form, *Anonymous*, ii. pl. 1000.
6. The court will not send an order of sessions back to be rectified by the minutes of the sessions, unless the error be clearly established, *Rex v. Bradenham*, ii. pl. 990.

ESTATE.

See SETTLEMENT BY ESTATE.

EVIDENCE.

1. Inhabitants, rated or liable to be rated, &c. are competent witnesses for or against their parishes, 54 G. 3. c. 170. § 9.
2. On an indictment against overseers for refusing to take upon them the office, or for wilfully neglecting their duty, the pro-

secutor must produce the appointment under the hands and seals of two justices; for parol evidence is not sufficient, *Rex v. Arnold (Sed qu.)* i. pl. 77.

3. The court of king's bench will not grant a *mandamus* to appoint overseers, unless evidence be given that the place in question is reputed to be a vill, *Rex v. Justices of Bedfordshire*, i. pl. 58.
4. The court of king's bench will not receive evidence to controvert a fact found by sessions, *Rex v. Ronton Abbey*, i. pl. 62.
5. For if the sessions expressly find a fact, although they appear to have drawn their conclusion from wrong premises, the parties are bound by it. *Rex v. Minchin-Hampton*, i. pl. 285.
6. An appointment of overseers cannot be made under 12 Car. 2. c. 2, unless evidence be given that the separate township cannot derive the benefit of 43 Eliz. c. 2. *Peart v. Westgarth*, i. pl. 54.
7. Same point, *Rex v. Uttoreter*, i. pl. 57.
8. Where a parish consists of several townships, some of which maintain their own poor, and has immemorially had more than four overseers, this is evidence that they cannot have the benefit of the 43 Eliz. c. 2. and entitles each township to have separate overseers, *Rex v. Horton*, i. pl. 61.
9. Same point, *Rex v. Leigh*, i. pl. 63.
10. See also *Rex v. Newell*, i. pl. 64.
11. To state upon an appeal against the appointment of overseers, that those whose acts are thereby complained of are justices, is an admission of their jurisdiction, *Rex v. Fluher*, i. pl. 72.
12. The *land-tax* is not good evidence, with respect to assessing the poor's rate, *Rex v. Clerkenwell*, i. pl. 122.
13. The sessions in stating a special case cannot suppress evidence of a particular fact, in order to bring a general question before the court, *Rex v. Hill*, i. pl. 289.
14. On an appeal against a poor-rate, on the ground that certain persons are omitted to be rated, a parishioner who is liable to be rated, but who in fact is not rated, is a competent witness to prove the rateability of the appellants, *Rex v. Prosser*, 4 T. R. 17.
15. So on an appeal against an order of removal, on a settlement by renting a tenement, the owner of the house, though housekeeper in the same parish, but not assessed to the poor rate, may be a witness, *Rex v. South Lynn*, ii. pl. 1031.
16. In an appeal between the parishes c. A. and B., the former may call an inhabitant of the latter, who is not only not rated, but receives relief, and compel him

- to be examined as a witness, *Res v. Little Lenny*, 6 T. R. 157.
17. An inhabitant of a parish, who is not rated, is a competent witness on an appeal between that parish and another, *Id. ibid.*
18. If a party appeal against a poor-rate, on the ground that he has no rateable property in the parish, the respondents must first establish their case, *Res v. Newbury*, i. pl. 295.
19. The fact of personal property having been rated one year is *prima facie* evidence that it is productive, and therefore rateable the next, and if not contradicted by other evidence, is sufficient to warrant the justice in deciding that it should be then rated, *Res v. Darlington*, i. pl. 206.
20. By 7 Jac. 1. c. 5., and 21 Jac. 1. c. 12. "an overseer of the poor on trial of an action brought against him for any thing done in his official capacity, may give the special matter in evidence."
21. By 3 W. & M. c. 11. § 12. "in all actions brought against churchwardens or overseers for misapplication of the parish money, the evidence of the parishioners, or any of them, other than such as receive *alms*, or any pension, or gift out of such monies, shall be admitted."
22. So persons not assessed to the parish rates, though liable to be rated, are good witnesses on an appeal against order of removal, *Res v. South Lynn*, ii. pl. 1031.
23. But persons appointed by act of parliament governors and directors of the poor of a certain parish, and made liable upon appeal against a rate made by them to the payment of costs, in case the sessions should award any to the appellant, cannot be witnesses on such appeal, though in truth only *trustees*, and entitled to be reimbursed such costs out of the parochial fund; for they are *parties to the cause*, and liable to the costs in the first instance, *Res v. St. Mary Magdalen*, ii. pl. 1035.
24. By 13 & 14 Car. 2. c. 12. § 20. "if any person be sued under this act (respecting bastard children), such person may give the special matter in evidence."
25. By 6 G. 2. c. 31. "the evidence of the mother of a bastard child, is sufficient for an order of filiation."
26. The examination of a pregnant woman taken before a justice of peace under 6 G. 2. c. 31. is admissible evidence on an application to the quarter sessions, to make an order of filiation on the putative father, even though the woman die before such application can be made, *Res v. Ravenstone*, i. pl. 545.
27. What shall be considered evidence of bastardy in general, i. pl. 484.
28. What shall be presumptive evidence of bastardy, *Foxcroft's case*, i. pl. 490.
29. To make the child of a married woman a bastard, evidence must be given that the husband had no access for nine months, previous to its birth, *Murray's case*, i. pl. 492.
30. Children born under a second supposed marriage, during the life of the first and legal husband are bastards, if it appear that he had no access, *Res v. St. Bride's*, i. pl. 494.
31. And it is not now necessary to prove that the husband was beyond the seas; for if no access be proved, the children are bastards, although the husband was in England during the whole time, *Pendrel v. Pendrel*, i. pl. 497.
32. But evidence of *criminal conversation* alone, is not sufficient to bastardize the issue of a married woman, *Res v. Brown*, i. pl. 495.
33. On an issue out of chancery to try the legitimacy of the defendant in a cause, the mother may be examined to prove that the child was not her husband's; but after her death her declarations, to this effect, are not evidence, *Clerk v. Wright*, i. pl. 496.
34. For though the general declarations or the answer of a parent in chancery are good evidence, after the death of such parent, to prove that a child was born before marriage, they are not evidence to prove that a child born in wedlock is a bastard, *Stevens v. Moss*, i. pl. 505.
35. Mere improbability that the husband was not the father, is not sufficient to bastardize issue, *Lomas v. Holmden*, i. pl. 498.
36. The reputed father of a bastard may give evidence that he was not married to its mother, because, whether he is the legitimate or natural father, his evidence does not discharge him from the maintenance of it, *Res v. St. Peter's*, i. pl. 499.
37. And although a married woman may, on a question of bastardy, give evidence of *criminal conversation*, yet she shall not be allowed to prove the non access of her husband, *Res v. Reading*, i. pl. 500.
38. And therefore an order of bastardy cannot be made on the testimony of a married woman only, *Res v. Rooke*, i. pl. 504.
39. But the mother is a competent witness to prove the illegitimacy of her children, *Res v. Bramley*, i. pl. 507.
40. A woman cannot give evidence of the non-access of her husband to bastardize her issue, although he be dead at the time of her examination as a witness, *Res v. Kea*, ii. pl. 1036.

41. But the child of a married woman may be proved a *bastard*, by other evidence than that of the husband's *non-access*, *Thompson v. Saul*, i. pl. 506.
42. The law always presumes against the commission of crimes, and, therefore, where a woman, 12 months after her first husband was last heard of, married a second husband, and had children by him; held, on appeal, that the sessions did right in presuming *prima facie*, that the first husband was dead at the time of the second marriage, and that it was incumbent on the party objecting to the second marriage to give some proof that the first husband was then alive, *Rex v. Twynning*, i. pl. 509.
43. The evidence of a *parish register* cannot be contradicted by the *day-book*, *May v. May*, i. pl. 501.
44. No evidence shall be admitted, on making a second order, to bastardize the children, *Rex v. Woodchester*, i. pl. 505.
45. An order of bastardy must be made on the *vivâ voce* testimony of witnesses; it cannot be made on *affidavit*, *Rex v. Colbert*, i. pl. 568.
46. An order of sessions reciting that it was made on *full hearing*, implies that it was made on evidence of the merits, *Rex v. Teriam*, i. pl. 611.
47. When there is conflicting evidence for the sessions to decide upon, and they draw a conclusion one way, the court will not disturb it, *Rex v. Mildenhall*, ii. pl. 475.
48. The birth of a bastard in a parish, is *prima facie* evidence that its settlement is in such parish, *Rex v. Woodford*, ii. pl. 29.
49. Hearsay evidence of the declaration of a deceased father as to the place of birth of his bastard child is not admissible to prove the birth settlement of such child, *Rex v. Erith*, ii. pl. 1035.
50. The sessions may receive parol evidence of an apprenticeship, in order to draw a conclusion of the fact, whether the binding was by indenture or not, *Rex v. East Knogle*, ii. pl. 595.
51. For an apprenticeship can only be proved by the production of the indenture, or by giving evidence that it existed, *Rex v. Holbeck*, ii. pl. 599.
52. Unless an indenture of apprenticeship be first proved to be lost, the sessions cannot admit parol proof of its contents, *Rex v. Castleton*, ii. pl. 603. See also *Rex v. St. Helen's*, ii. pl. 600.
53. It is not necessary to prove the execution of an indenture of apprenticeship, by the master of the apprentice, *Rex v. Ribchester*, ii. pl. 534. See *Rex v. Houghton le Spring*, ii. pl. 284.
54. In order to establish a settlement by apprenticeship, it was proved that the indenture was only of one part, and that upon application to the pauper, who was then ill, and died soon afterwards, to know what had become of it, he declared that when the indenture expired it was given to him, and he burnt it long since; and it was also proved that enquiry was made of the executrix of the master, who said that she knew nothing about it: held that this proof was sufficient to let in parol evidence of the contents of the indenture, *Rex v. Morton*, ii. pl. 606.
55. Where upon appeal against an order of removal, the appellants, in order to shew a settlement in a third parish, called the pauper to prove that he was bound apprentice by indenture to *D.* and served in the third parish, and then produced the indenture; but failing to prove the death of the subscribing witness, so as to entitle them to prove his hand-writing, proposed to call the pauper to prove his own execution, and that of the other parties to the indenture, which evidence the sessions rejected: held that the sessions did well for the rule which requires the subscribing witness to be produced, or his absence accounted for, applies as well to settlement cases as others, *Rex v. Harringworth*, ii. pl. 607.
56. But where the pauper married at the time of his being a soldier, and in his examination under the mutiny act, *deposes* that he had been put apprentice and had served out his time, which fact was confirmed by his wife on her examination before the sessions, these were held sufficient evidence of an apprenticeship, *Rex v. St. Michael's, Bath*, ii. pl. 601.
57. The examination of a soldier, taken under the mutiny act, is to be received as evidence as to his settlement, even though he be dead, or absent from the kingdom at the time when the appeal is tried, *Rex v. Warmminster*, ii. pl. 708.
58. Indentures not stamped pursuant to the 8 Ann. c.9. § 32. are void, and cannot be given in evidence, *Cuerden v. Leland*, i. pl. 643.
- S. P. *Rex v. Llanvari Dyffryn Clwyd*, i. pl. 647.
- S. P. *Rex v. Ditchingham*, ii. pl. 505.
- S. P. *Rex v. Edgeworth*, ii. pl. 68.
59. Nor can an agreement between the first and second master be given in evidence unless it be stamped; nor can parol evidence thereof be given, *Rex v. St. Paul Bedford*, ii. pl. 604.
60. Where a pauper had served a master,

- under unstamped articles of agreement, to work with him for three years, at certain rates of weekly wages, and under certain covenants, after which he had continued to serve his master for four years longer, without coming to any new agreement; though such unstamped writing cannot be received in evidence for the purpose of proving the agreement between the parties, yet the sessions may look at it for the purpose of seeing when it ceased to operate, in order to guide them in receiving parol evidence of service for the last four years, at wages from whence the sessions might presume a yearly contract, *Res v. Pendleton*, ii. pl. 1059.
61. But indentures regularly stamped are *prima facie* good, and therefore may be given in evidence, although the binding is for a less time than the statute 43 Eliz. c. 2. requires, *Res v. St. Nicholas*, i. pl. 651.
62. And parol evidence may be given to explain, whether a written agreement was intended to constitute an apprenticeship, or a hiring and service, *Res v. Laindon*, ii. pl. 605.
63. An apprentice who has run away from his master, and is apprehended and carried before a justice of the peace, under the statute of 6 G. 3. c. 25. cannot give in evidence, that the indentures were not conformable to the directions of 5 Eliz. c. 4. *Res v. Eorred*, i. pl. 638.
64. If on parol evidence, indentures are proved to have been executed, it shall be presumed that they were duly stamped, *Res v. East Knoyle*, i. pl. 644.
65. *See quare*; for it is said in another case, that on parol evidence of the existence of indentures, sufficient evidence must also be given for the court to presume that they were regularly stamped and the duty paid, *Res v. Badby*, i. pl. 649.
66. But if an indenture of apprenticeship come out of the hands of the opposite party, after notice to produce it, it must *prima facie* be taken to have been duly executed, and must be received in evidence without proof of the execution, *Res v. Middlezoy*, ii. pl. 602.
67. Where J. G. was bound apprentice in 1764, in C., and upon the death of his master in 1769, was assigned by the widow by indorsement on the indenture, whereby she acquitted and assigned over her apprentice J. G. for all the remainder of his apprenticeship, and J. G. served under such an assignment in K., which parish for the last seven years had regularly relieved the family of J. G. whilst residing in another parish: held that this was evidence from which the sessions ought to have presumed that the widow was executrix and capable of assigning the apprentice, and that J. G. had acquired a settlement in K., and the sessions having drawn a contrary conclusion, this court quashed the order of sessions, *Res v. Barnsley*, ii. pl. 580.
68. Parol evidence of an order of removal proved to be lost, is sufficient, *Res v. Metherringham*, ii. pl. 1052.
69. An order of justices for removing the wife and daughters of a pauper to the place of their settlement, is supported, *prima facie*, by shewing that the parish to which the removal was made, was the place of settlement of the wife before the marriage, *Res v. Harberton*, ii. pl. 1038.
70. The master of an apprentice, on being examined at the sessions, need not answer the question, "Whether a parol agreement was not made between him and the father of the apprentice, at the time of signing the indenture, that he the master should not pay for the first two years of the time certain monies *per week*, which were covenanted in the indenture to be paid to the master?" for it tends to make him contradict his own deed, *Res v. Portea*, i. pl. 650.
71. A copy of the parish register of christenings, and proof of identity of the person, is sufficient evidence to prove a settlement by birth, *Res v. Creech St. Michael's*, ii. pl. 1030.
72. Upon the trial of an appeal at the quarter sessions, the respondent parish proved relief granted to the father of the pauper by the appellant parish before the year 1815. The appellant parish then tendered an order of sessions made in the year 1815, quashing an order of justices for the removal of the brother of the pauper to the appellant parish. And they tendered parol evidence to shew that the ground of the decision of the court of quarter sessions was, that the father of the pauper had not at that time any settlement in the appellant parish, and consequently that the son had not any derivative settlement there: held that even if parol evidence was admissible to prove the ground of the decision of the sessions, still that the order of sessions was not evidence that the father of the pauper was not settled in the appellant parish in 1815, because the father's settlement was a matter that arose collaterally on the trial of the first appeal, *Res v. Knoptoft*, ii. pl. 1042.

73. A register of baptism *per se* is no evidence of the place of birth of the party baptized, *Rex v. North Petherton*, ii. pl. 1044.
74. The birth of a pauper removed as a married woman is sufficient *prima facie* evidence of settlement to oblige the other side to go on, *Rex v. Woodford*, ii. pl. 29.
75. So the place of birth of a legitimate child is sufficient evidence of the place of settlement, although evidence be given that the father is still alive, and that he served two years in a different parish, unless it be further proved that such service was under a hiring for a year, *Rex v. Whitley*, ii. pl. 30.
76. The derivative settlement of a pauper may be proved, by other evidence than the father's testimony, *Rex v. Bucklebury*, ii. pl. 856.
77. Proof of the father's settlement is sufficient to establish the settlement of the son in the same parish, if nothing appear to contradict it, *Rex v. Stone*, ii. pl. 44.
78. By 26 G. 2. c. 33. § 10. "to support a marriage by publication of banns, it is not necessary to prove that the parties actually dwelt in the parish in which the banns were published."
79. By 26 G. 2. c. 33. § 10. "to support a marriage by licence, it is not necessary to prove that the usual place of abode of one of the parties, for the space of four weeks was in the parish where the marriage was solemnized."
80. By 26 G. 2. c. 33. § 10. "nor shall any evidence in either of the above cases be received, to prove the contrary in any suit touching the validity of such marriage."
81. By 26 G. 2. c. 33. § 15. "marriage must be solemnized in the presence of two or more witnesses, besides the minister who shall celebrate the same; an entry whereof shall be made in the register, expressing whether it was by banns or licence; or, if both or either of the parties be under age, with the consent of parents or guardians, and signed by the minister and the two witnesses."
82. By 21 G. 3. c. 55. § 3. "the registers of marriages in those chapels or churches legalized by this act, or copies thereof, shall be received in evidence in the same manner as copies of register of marriage, under the MARRIAGE ACT."
83. It is no evidence of a person having gained a settlement in a parish that he is described of such parish in the register of his marriage, *Rex v. Harborton*, i. pl. 718.
84. An order removing a man and woman as husband and wife is, if unappealed from, conclusive evidence of the fact of marriage as between the two parishes, *Rex v. Berkeawell*, ii. pl. 85.
85. Therefore, where a certificate was given to Richard Burdon and Mary his wife, it was held conclusive evidence as against the certifying parish that she was his wife, although the fact was, that Richard Burdon had been previously married to another woman, who was then living, *Rex v. Headcorn*, ii. pl. 88.
86. So, where George Wise and Jane his wife were removed by an order, which was unappealed from, and it was afterwards discovered that she was not his wife, the removal was held conclusive of the fact, and prevented the parish from removing her as a single woman, *Rex v. Enborn*, ii. pl. 92.
- See also *Rex v. Ipsley*, ii. pl. 738.
87. Where an order of removal is appealed against, and is quashed generally by the sessions, the appellant on the trial of another appeal may shew by evidence the distinct ground upon which the former order was quashed, *Rex v. Wheelock*, ii. pl. 1045.
88. Marriage may be proved by other evidence than a copy of the register, *Rex v. Devereux*, ii. pl. 90.
89. As by the *vivâ voce* testimony of witnesses who were present, *Id. ibid.*
90. So also cohabitation as man and wife for 30 years, is such presumptive proof of marriage, as will entitle the children of the parties to the settlement of their parents under it, *Rex v. Stockland*, ii. pl. 91.
91. The proof of a marriage in fact, is not necessary for the purpose of gaining a settlement; proof by cohabitation, reputation, and other circumstances from which a marriage may be inferred, is sufficient, *Morris v. Miller*, ii. pl. 94.
92. And if the register be destroyed, and the parson and clerk dead, the evidence even of a person who was only present at the marriage dinner may be sufficient, ii. pl. 94 a.
93. On the removal of a woman to her supposed husband's settlement, it may be proved either by the man himself, or by his real wife, that he was not married to the woman removed, *Henley v. Chesham*, ii. pl. 96.
94. The removal of a wife is *prima facie* evidence, that the place to which she is removed is the place of her husband's settlement, *Rex v. Ironacton*, ii. pl. 111.
95. So on the removal of a wife to the place of her last settlement, such place shall be intended the settlement of the husband, *Rex v. Higher Walton*, ii. pl. 112.

96. On the removal of a *widow* or a *wife*, it is enough in the first instance to prove her maiden settlement, *Rex v. Ryton*, ii. pl. 114.
 See also *Rex v. Hinxworth*, ii. pl. 115.
 See also *Rex v. Leigh*, ii. pl. 116.
 See also *Rex v. Woodsford*, ii. pl. 118.
 See also *Rex v. Hedsor*, ii. pl. 119.
 See also *Rex v. Towcester*, ii. pl. 120.
97. The settlement which a widow has gained in her own right, cannot be changed by evidence that she was afterwards married to a man, who in his life-time told her that he was born in *Yorkshire*; for this is no evidence of a derivative settlement from her husband, *Rex v. Hensingham*, ii. pl. 117.
98. In examining the legality of a settlement by renting a tenement, the value shall be taken according to the rent, if no other evidence of value appear, *Kniveton v. Tusington*, ii. pl. 198.
99. To prove a settlement by hiring and service, there must be evidence given of a contract either express or implied, *Gregory Stoke v. Pitminster*, ii. pl. 269.
 Same point, *Rex v. Weyhill*, ii. pl. 271.
 Same point, *Rex v. Thames Ditton*, ii. pl. 272.
 Same point, *Rex v. St. Mary, Guildford*, ii. pl. 273.
 Same point, *Rex v. St. Matthew, Ipswich*, ii. pl. 274.
 See also *Rex v. Stokesley*, ii. pl. 275.
100. When a general hiring is proved, it shall be taken to be *primâ facie* evidence of a hiring for a year, *Rex v. Wincaunton*, ii. pl. 289.
101. Evidence of a pauper's having lived in the capacity of an ostler, and of his having said that he was settled in the parish, will support the inference that he was hired for a year, *Rex v. Holy Trinity*, ii. pl. 481.
102. Formerly the declarations of the pauper's father made to his wife respecting his having been hired for a year, and served it in a particular parish, were admissible evidence on an enquiry into the settlement of the son, *Rex v. Nutley*, ii. pl. 480.
103. Formerly the declarations of a husband as to facts concerning his settlement were, after his death, admissible evidence, *Rex v. St. Sepulchre*, ii. pl. 482.
104. But now neither the hearing of the pauper, nor his *ex parte* examination is evidence of his settlement, *Rex v. Nuneham Courtney*, ii. pl. 486.
 Same point, *Rex v. Ferry Frystone*, ii. pl. 487.
 S. P. *Rex v. Abergwilly*, ii. pl. 488.
105. A married at the time of his being a soldier, when being examined agreeably to the mutiny act, he deposed that he had gone apprentice to B. and lived with him five years; and his wife deposed before the sessions, that she had heard him speak to the same purpose; and this deposition of A. and evidence of his wife, were held to be sufficient evidence to prove an apprenticeship, *Rex v. St. Michael's, Bath*, ii. pl. 601.
106. But parol evidence is not sufficient to prove an indenture of apprenticeship; the indenture itself must be produced, *Rex v. St. Helen's*, ii. pl. 600.
107. And if the indenture be lost, diligent enquiry after it must be proved, before parol testimony can be received, *Rex v. St. Sepulchre*, ii. pl. 482.
108. If a servant after serving a year, part of which was under a retrospective hiring, so that no settlement could be gained by it, continue in service part of another year, the justices may presume a yearly hiring for the second year, *Rex v. Hales*, ii. pl. 485.
109. If a servant live three years in service with the same master, it is evidence from which the justices at the sessions may infer a hiring for a year, though it appear that at first the servant was only hired for part of a year, *Rex v. Long Wharton*, ii. pl. 484.
110. If a husbandman serve for a year, it is strong presumptive evidence that he served under a yearly hiring, *Rex v. Lyth*, ii. pl. 483.
111. Giving parish relief to a pauper within the parish is no evidence of his settlement there, *Rex v. Chatham*, ii. pl. 833.
112. On a question respecting a settlement by renting a tenement of 10l. a year, the sessions ought to receive evidence of its *real value*, any year while the pauper occupied it, and not be guided merely by the rent, *Rex v. Bilsdale Kirkham*, ii. pl. 202.
113. So on questions respecting the equality of poor-rates, the sessions must receive evidence of the real value of the estate rated, whether that value has or has not been increased by the improvements of its owner, *Rex v. Mast*, i. pl. 204.
 S. P. *Rex v. Skingle*, i. pl. 208.
114. Parol evidence may be given of a certificate, *Rex v. St. Maurice*, ii. pl. 770.
115. A deed coming out of the hands of the opposite party, after notice to produce it, must *primâ facie*, be taken to be duly executed, and must be received in evidence without proof of the execution, *Rex v. Middlesex*, ii. pl. 602.
116. In settlement by estate, if it appear by

- the deed of conveyance that the consideration money paid was only 28*l.*, yet parol evidence may be given to show that the real consideration was 50*l.* *Rex v. Soammonden*, ii. pl. 670.
117. By 5 G. 2. c. 29. § 8. "a parish certificate allowed and witnessed in the manner described by the act shall be taken and allowed in all courts as evidence, without other proof."
118. A certificate above 50 years old shall be received in evidence, although the allowance is not certified, as directed by 3 G. 2. c. 29. *Rex v. Farrington*, ii. pl. 719.
119. The parties producing, on an appeal at the sessions, a parish certificate of 30 years' date, need not give any account of it; for the bare production of it is sufficient, *Rex v. Rytton*, ii. pl. 771.
120. On an appeal, the respondents, in order to prove the fact of the delivery to them of a certificate given by the appellants, acknowledging the pauper to be their settled inhabitant, produced an old book from their own parish chest, in which was an entry of that fact in the hand-writing of a former parish officer: Held, that such evidence was inadmissible, *Rex v. Debenham*, ii. pl. 773.
121. A certificate granted by some of the parish officers of a parish, consisting of several hamlets, and having separate overseers, although they therein describe themselves as officers of the parish at large, may be explained by evidence that they were only the officers of the hamlet in which the pauper was settled, *Rex v. Samborn*, ii. pl. 721.
122. A parish, to discharge itself from a certificate, must give evidence of some fact which by the law discharges the certificate; for the court will not presume a discharge from other facts, *Rex v. Warblington*, ii. pl. 759.
123. Evidence of a settlement in *A.*, by showing that the pauper's grandfather came into *B.* under a certificate from *A.*, is rebutted by showing that *B.* had relieved the pauper and his family while residing in other places, *Rex v. Stanley cum Wrenthorpe*, ii. pl. 767.
124. An order of removal stating that it was made on *due proof* is sufficient, *Rex v. Southwold*, ii. pl. 812. *n.*
125. The justices of one county cannot make an order of removal upon evidence transmitted to them by the justices of another county, although they verify the truth of such evidence on oath, *Rex v. Coln St. Aldwin's*, ii. pl. 821.
126. The testimony of the father to prove the derivative settlement of his children may be dispensed with, *Rex v. Bucklebury*, ii. pl. 824.
127. *Qu.* If the family of a pauper can be removed on the evidence of the father, taken by two justices in the presence of each other, if he die or become insane before removal, *Rex v. Eriswell*, ii. pl. 828.
128. The owner of a house died before an appeal was heard, and a witness proved a declaration made by him during the period when the pauper occupied the house, that he had let it to the pauper, and that *P.* had guaranteed the rent. *Quare*, Whether this declaration was properly received in evidence, *Rex v. Chediston*, ii. pl. 192.
129. A justice cannot commit a pauper for returning after removal, on his own confession that he belongs to another parish, *Rex v. Angel*, ii. pl. 884.
130. The justices of the sessions are sole judges of the truth of the evidence, and of the credibility of the witnesses, as well as of the law; and therefore a bill of exceptions to evidence given before them will not lie, *Rex v. Preston*, ii. pl. 932.
131. The sessions cannot alter defects in an order which it is necessary to hear evidence to rectify, *Rex v. Great Bedwin*, ii. pl. 934.
132. The sessions, in stating a case, must find the facts, and not state the evidence, or give the reasons on which their judgment is founded, *Rex v. Tedford*, ii. pl. 986.
- S. P. Rex v. Murtley*, ii. pl. 988.
- See also *Rex v. Rainham*, ii. pl. 997.
133. But when the sessions set out the whole reason, and it is clearly wrong, the court will quash the order, *Rex v. Gayer*, i. pl. 14.
134. The fact of fraud must be positively found by the sessions, for the court will not infer it, *Rex v. Weston*, ii. pl. 989.
135. But if they state all the facts arising from the evidence, the court of king's bench will examine the propriety of their conclusions, *Rex v. Tedford*, ii. pl. 986.
136. Upon an appeal against a rate made under a private act of parliament, the respondent appearing to answer the appeal, and admitting when called upon by the sessions, that he had made the rate by virtue of a certain act of parliament, a printed copy of which, in the common form, was produced in court by the appellants; and the sessions having thereupon entered into the merits of the appeal, and decided upon them, notwithstanding an objection made by the respondents, that the appellants had not given legal evidence of the jurisdiction of

- the sessions to receive the appeal, for want of proof of the printed copy having been examined with the rolls of parliament, this court refused to quash their order, which was removed by certiorari, *Rex v. Shaw*, ii. pl. 1037.
137. The determination of the commissioners under an inclosure act, as to the boundaries of a parish to be inclosed, is not conclusive of the fact as to what were the boundaries antecedently to such determination, *Rex v. St. Mary, Bury St. Edmunds*, ii. pl. 1041.
138. Boundaries fixed by commissioners under private inclosure act, when not binding on parish, *Rex v. Washbrook*, ii. pl. 1043.
139. The court of king's bench will send back a special case in order that it may be amended as to a particular fact by new evidence, *Rex v. Hitcham*, ii. pl. 991.
140. Although the sessions state no case for the court, *Rex v. Margam*, ii. pl. 1003.
141. If a case be sent back to be restated, the sessions are not necessarily obliged to hear evidence as to the defective part only, but may go through the whole evidence, *Rex v. Page*, ii. pl. 992.
142. For they are to consider it like a *new trial*, and to hear the whole evidence, *Rex v. Bramley*, ii. pl. 998.
143. But where the only defect is their not having drawn any conclusion from the facts stated, they are not bound to hear new evidence, *Rex v. Bray*, ii. pl. 993.
144. And the court will not send a case back to be restated because the sessions have improperly rejected evidence, *Rex v. Nulley*, ii. pl. 994.
145. Nor will they order a case to be restated on affidavit that the clerk of the peace has not stated the evidence truly, *Rex v. Burgh*, ii. pl. 995.
146. But if the fact required to be stated be materially and clearly established, the court will send the case back to be restated by the minutes of the evidence, *Rex v. Bradenham*, ii. pl. 990.

EVIL FAME.

By 55 G. 3. c. 101. § 5. "persons of evil fame shall be considered as actually chargeable to the parish in which they reside, and liable to be removed to their legal settlements."

EXAMINATION.

1. Examination of prisoners as to their settlements made evidence, 59 G. 3. c. 12. § 28.
2. An order of bastardy made on the examination of *one justice only*, is void, *Rex v. Beard*, i. pl. 539.

3. Examination being a judicial act, must not only be made by two justices, but it must be taken in the presence of each other, *Rex v. West*, i. pl. 540.
4. For it would be useless for the legislature to appoint two or more persons to exercise judicial powers, unless they are to act together: separate examinations by different magistrates may produce different facts, *Billings v. Prius*, i. pl. 545.
5. But it is not necessary to the validity of an order of filiation, that the putative father should be present at the examination, *Rex v. Upton Grey*, i. pl. 544.
6. The examination respecting a pauper's settlement for the purpose of making an order of removal, must be by the two justices who sign the order, *Rex v. Wykes*, ii. pl. 818.
7. Therefore an order of removal stating that the examination of the pauper was taken "before us or one of us," is bad, *Ware v. Stanstead*, ii. pl. 816.
8. The justices of one county cannot make an order of removal on an examination taken by justices of another county, *Rex v. Coln St. Aldwins*, ii. pl. 821.
9. And the examination must be taken and signed by the same two justices, in the presence of each other, *Rex v. Howarth*, ii. pl. 822.
10. So also in the appointment of overseers the same two justices must seal and sign the appointment in the presence of each other; for this is not merely a ministerial act like signing a rate, but a judicial act, requiring an examination into the circumstances on which the justices are to exercise their discretion, *Rex v. Forrest*, i. pl. 25.
11. But an order of removal signed by two justices separately, and in different counties, is only *voidable*, and not *void*, *Rex v. Stotfold*, ii. pl. 788.
12. It was formerly doubted whether if two justices take the examination of a pauper relative to his settlement, but do not remove him, and the pauper afterwards die or become insane, two other justices might remove his family on such examination, *Rex v. Eriswell*, ii. pl. 828.
13. But it is now settled that an *ex parte* examination in writing of a pauper, taken on oath before two magistrates, for the purpose of removing him to the place of his settlement, is not admissible in evidence upon an appeal against an order of removal, on the ground of the pauper's having absconded between the notice of appeal and the trial of it before the quarter sessions, although the respondents had used due diligence, but without effect,

- to procure the attendance of the pauper as a witness, he not having been heard of from the time of his absconding, *Rex v. Nuneham Courtney*, ii. pl. 486.
14. Neither the hearsay of a pauper who is dead, nor his *ex parte* examination in writing taken on oath before two magistrates touching his settlement, are admissible evidence of such settlement, *Rex v. Ferry Frynton*, ii. pl. 487.
- S. P. *Rex v. Abergwilly*, ii. pl. 488.
15. It is not necessary that the person removed should have notice of or be present at the examination, *Anonymous*, ii. pl. 815.

EXECUTION.

A commitment under the vagrant act is a commitment in execution, *Rex v. Brooke*, 2 T. R. 190., *Rex v. Rhodes*, 4 T. R. 220.

EXECUTORS AND ADMINISTRATORS.

1. If a demand be made on a person legally assessed to the poor's rate, and he refuse or neglect to pay, and dies before a warrant of distress issues, a second demand and refusal made on his widow, will not authorize the parish-officers to make the levy on the goods of the deceased, by virtue of a warrant tested after administration granted to a third person; but the justice ought to issue a special summons to the administrator, to shew cause why distress should not be made, *Stevens v. Evans*, i. pl. 265.
2. *Sed qu.* If a man die intestate, and a demand has been made on him before warrant granted, whether a distress can be made of the goods in the hands of his administrator, *Wallis v. Hewet*, i. pl. 265. text.
3. By 17 G. 2. c. 58. § 5. "if any overseer shall die before the expiration of his office, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office, to some churchwarden or other overseer of the same place, and pay out of the assets all sums of money remaining due, which such overseer received by virtue of his office, before any of his other debts are paid."
4. By 20 G. 2. c. 45. § 6. "an apprentice, who, on default of his master or mistress, has paid the double duties imposed on non-payment of the single duties on the indentures, may recover back the apprentice fee from the executors or administrators of such master or mistress."
- S. P. by 18 G. 2. c. 22. § 25.
5. The executors of a master shall repay a proportion of the apprentice-fee, as a debt due to the apprentice on simple contract, *Soam v. Bowden*, i. pl. 663.
6. On a covenant to instruct and maintain an apprentice, the executors or administrators are liable, on a breach of it, *Wadsworth v. Gay*, i. pl. 687.
7. Executors and administrators are not obliged to provide for an apprentice, *Rex v. Pett*, i. pl. 689.
8. Therefore an order of sessions that the executor shall keep the testator's apprentice, is bad, *Rex v. Peck*, i. pl. 691.
9. But by the custom of London an executor shall place the testator's apprentice to another master of the same trade, *Id. ibid.*
10. A widow before administration granted may assign her husband's apprentice, *Rex v. East Bridgeford*, i. pl. 693.
11. The interest of a master in his apprentice is merely personal; and therefore the master's executor cannot maintain debt on a bond for the performance of the covenants in the indentures, unless "executors" are named, *Baxter v. Burfield*, i. pl. 696.
12. An apprentice is not bound to serve the executor of his deceased master, *Id. ibid.*
13. For an apprenticeship is a personal trust between the master and servant, and is determined by the death of either, *Rex v. Eakring*, i. pl. 697.
14. By 4 Ann. c. 19. § 16. "the widow of the master of any ship or vessel to whom a parish-child shall have been put apprentice, or the executor or administrator of such master, shall have the same power of assigning such apprentices as is given by 43 Eliz."
15. By 2 & 3 Ann. c. 6. § 17. "the executors, administrators, and assigns of a master in the sea service, whose apprentice is impressed, or has voluntarily entered on board a king's ship, shall be entitled to able seaman's wages for such apprentice."
16. A person in the occupation of a tenement of 10 $\frac{1}{2}$ a year, left three children bequeathed five shillings each to two of them; and made the other his executrix and residuary legatee: the husband of the executrix, by residing forty days on the tenement, and paying rent for it thereby gains a settlement, although his wife, the executrix, never proves his father's will, *Rex v. Netherseal*, ii. pl. 175.
17. The lease of a farm of only 22 $\frac{1}{2}$ a year devised to five children, four of whom are made executors, will give a settlement to the executor who proves the will, enter on the farm as executor, and continue thereon for the space of 40 days; for an:

interest, though under 10*l.* a year, which devolves upon a person by operation of law, makes the estate their own as to the purposes of settlement, *Rex v. Uttomster*, ii. pl. 620.

18. The person entitled as executor to the remainder of a term of 99 years of a cottage of the value of five shillings a year, gains a settlement by residing on such estate 40 days, *Rex v. Sundrish*, ii. pl. 611.

19. In a settlement by hiring and service, service with the executor of the master for the remainder of the year in a different parish from whence the hiring for a year was made, is good; for the death of the master does not dissolve the contract; and the servant, by such service, gains a settlement in the second parish, *Rex v. Lelock*, ii. pl. 597.

20. If the administratrix of a master consent that his apprentice shall go home to his father, yet if the indentures are not cancelled, he gains a settlement under them, *Rex v. Chick*, ii. pl. 527.

21. An apprentice assigned by his master's widow before administration granted, and turned over by the assignee under a parol agreement to a third master, gains a settlement by service with such third master under the original indentures, *Rex v. Bridgford*, ii. pl. 448.

22. The next of kin to a person possessed of a lease for years, who dies intestate, does not gain a settlement by living upon such estate, unless his right to the term becomes vested by his procuring letters of administration, *South Sydenham v. Lamerton*, ii. pl. 612 n.

23. For without administration a person solely entitled, but in whom the whole interest does not vest for his own use, cannot by residence acquire a settlement, *Rex v. North Curry*, ii. pl. 651.

24. The husband of an administratrix who is entitled as a trustee to a lease for years, is not removable from such estate, *Murray v. Grandborough*, ii. pl. 609.

25. A son who after his father's death lives on an estate for years during the remainder of a term, but does not take out administration until after the term expires, does not gain a settlement by residence on such estate, *Rex v. Widworthy*, ii. pl. 612.

26. The mortgagee of a term for 18*l.* to whom 1*l.* 10*s.* were due for interest, and 18*l.* 10*s.* more by bond and simple contract, who, on the death of the mortgagor, takes out administration as a principal creditor, and thereby enters and becomes possessed of the estate, gains a settlement by residing thereon for 40 days, *Rex v. Stockland*, ii. pl. 667.

27. A father dies intestate, by which his married daughter, then living with her husband under a certificate, becomes entitled to house and land in the certificated parish for the remainder of a term, determinable on her death: the certificate man gains a settlement by a residence upon this estate for 40 days, after a possession of 20 years, although no administration was ever granted of his father-in-law's effects, *Rex v. Cold Ashton*, ii. pl. 617.

28. The executor of a tenant from year to year of an estate under 10*l.* a year, may gain a settlement by residing on it 40 days, although he does not prove the will, *Rex v. Stone*, ii. pl. 640.

EXEMPTION.

1. An exemption, in a private statute, of lands given to charitable purposes "from all public taxes, charges, and assessments whatsoever," extends to the poor-rate, *Rex v. Scott*, i. pl. 195.

2. But the master of a free school appointed by the minister and inhabitants of the parish under a charitable trust, whereby a house, garden, &c. were assigned "for the habitation and use of the master and his family freely without payment of any rent, income, gift, or sum of money, or other allowance whatsoever," for the teaching of 10 poor boys of the inhabitants, is liable to be rated to the poor for his occupation of the same; for the exemption in the case of *Rex v. Scott* was under an act of parliament, by which the legislature had a right to bind every person; but in the present case the exemption is by deed, and those only who are parties to a deed are bound by it, *Rex v. Catt*, i. pl. 305.

3. In settlement by hiring and service, if an exemption from service at certain stated times, form a part of the original contract, service for a year under such a hiring will not gain a settlement, *Rex v. St. Agnes*, ii. pl. 459.

4. Persons exempted from serving the office of overseer of the poor, i. pl. 9 to 19.

OF EXERCISING A TRADE.

1. By 5 Eliz. c. 4. § 31. "none may use any manual occupation, except he hath been apprentice to the same."

2. By 15 Car. 2. c. 15. § 2. "certain trades are excepted, in which persons may set up without having served seven years."

3. By 6 & 7 Will. 3. c. 17. § 12. "if any apprentice shall discover and convict two or

- more coiners, he may exercise a trade, though he has not served seven years."
4. By 3 G. 3. c. 8. § 1. "all officers, mariners, and soldiers in the King's service, may exercise trades without having served an apprenticeship."
 5. By 17 G. 3. c. 55. (reciting 5 Eliz. c. 4.) "master dyers within the four counties, may take as many apprentices as they please."
 6. Every man may exercise a trade for his own use; but he cannot take an apprentice, *The City of London's case*, 8 Co. 129.
 7. Serving as an apprentice is sufficient, *Rex v. Moor*, 3 Keb. 400.
 8. What trade shall be considered within the statute, *Rex v. Plume*, 1 Vent. 326.
 9. Exercising a trade by others is within the statute, *Hobbes v. Young*, 2 Salk. 610.
 10. Service of apprenticeship beyond sea is sufficient, *Rex v. Fox*, 1 Salk. 67.
 11. Following a trade for seven years is sufficient, *Rex v. Maddax*, 2 Salk. 615.
 12. Serving an apprenticeship to a trade not mentioned in the statute is sufficient, *Rex v. Lister*, Str. 788.
 13. Serving an apprenticeship to a new trade is sufficient, *Rex v. Monro*, 1 Bar. K. B. 277.
 14. But the mere exercise of a trade for seven years seems not to be sufficient, *Rex v. Morrice*, 1 Bar. K. B. 367.
 15. Exercising a trade seven years without any prosecution with effect, is a sufficient qualification, *Wallen v. Holton*, 2 Blac. Rep. 235.
 16. If one of two partners have served an apprenticeship, the other is thereby protected from the restraint and penalties of the statutes, *Raymond v. Chace*, 1 Burr. 2.
 17. A man may exercise as many trades as he has worked at, or served to, for seven years, *French v. Adams*, 2 Wils. 168.
 18. The quarter sessions may proceed by information on the statute 5 Eliz. c. 4. for exercising a trade, not having served an apprenticeship for seven years, *Farren v. Williams*, Cowp. 369.
 19. A bye-law made by a company in a corporation, to restrain the number of apprentices to be taken by any of the members, is void, *Rex v. The Coopers' Company of Newcastle*, 7 T. R. 545.
- stantial freeholders, though it was no part of any parish; had been time out of mind extra-parochial, without church, chapel, or parochial rights; and had never had overseers, *Rex v. Rufford*, i. pl. 47.
5. But the extra-parochial place must be a vill, or a reputed vill; and therefore where it was found that an extra-parochial place was not, nor ever had been, a township or village, or had ever been reputed to be a township or village, it was held that overseers could not be appointed, *Rex v. Welbeck*, i. pl. 50.
 4. So the sites and areas of ancient cathedrals, colleges, and inns of court, being extra-parochial, and not vills either legally or by reputation, are not liable to the appointment of overseers, *Rex v. Peterborough*, i. pl. 59.
 5. Therefore chambers in an inn of court are not rateable to the poor, *Maron v. Horsenail*, i. pl. 153.
 6. The previous question upon this point always is, "Whether the extra-parochial place shall be taken, in legal construction, to be a vill," *Dolting v. Stokelane*, i. pl. 46.
 7. An extra-parochial place consisting of a farm of about 300 acres of land, and of two houses belonging to and in the occupation of different persons, of the value of 300*l.* a year, and in which no overseer has ever been appointed, is not a vill; for the definition of a vill, "*ex pluribus mansionibus vicinata*," must mean more than two houses, *Rex v. Denham*, i. pl. 48.
 8. So an extra-parochial place once consisting of a capital mansion-house, the residence of a nobleman, and three keepers' lodges, adjoining to the park, but converted into five farms, with each a dwelling-house, including the old lodges, in the occupation of different tenants, is not a vill, *Rex v. Grafton*, i. pl. 49.
 9. But if an extra-parochial place be reputed a vill, though it consists only of a mansion-house and a farm-house, occupied by different persons, and both of them, with the estate thereto belonging the property of one person, yet overseer may be appointed, *Rex v. Eyford*, i. pl. 60.
 10. An extra-parochial place locally situated within a parish, may be charged in aid of the parish, *Rex v. Boroughfen*, i. pl. 405.
 11. So also the inhabitants of an extra parochial place, may be taxed to the relief of an adjoining parish, *Rex v. Clarendon Park*, i. pl. 414.
 12. Same point, *Rex v. Boroughfen*, i. pl. 417.
 13. By 6 G. 2. c. 31. "a bastard chargeable or likely to become chargeable to an extra parochial place, may be filiated, &c. as born in and chargeable to a parish."

EXTRA-PAROCIAL PLACES.

14. Therefore where an order of filiation was made, stating that the child was born "in the foreign of Ryegate," an extra-parochial place, the order was held good, *Res v. Baker*, i. pl. 528.
15. A hiring for a year in an extra-parochial place is good, so as to render a service under it in another parish a settlement, *Res v. St. Peter's*, ii. pl. 591.
16. But no settlement can be gained in an extra-parochial place, *Res v. Collingburn Dean*, ii. pl. 70.
17. And therefore if a servant be hired for a year, and serve a year under such hiring in *Furness's Inn*, she cannot thereby gain any settlement in the parish in which the inn is situated, for it is an extra-parochial place; but she shall be removed to that parish in which she had gained a settlement next before such hiring and service, *Res v. St. Andrew Holborn*, ii. pl. 408.
18. For the justices cannot remove a pauper to an extra-parochial place, *Res v. Tamworth*, ii. pl. 715.
19. Therefore where a person had served as apprenticeship within the precinct of *Bridwell*, and afterwards went to live in *Clerkenwell*, from whence he was removed to the precinct by an order, stating *Bridwell* to be an extra-parochial place; it was said by LORD HOLT, "If a place be extra-parochial, and has not the face of a parish, the justices have no authority to send any man thither, *Bridwell v. Clerkenwell*," ii. pl. 776.
20. And therefore a removal to an extra-parochial place is a nullity, and not affected by not appealing from the order, *Res v. Swalecliffe*, ii. pl. 896.
21. Nor can they remove from an extra-parochial place, *Forest of Dean v. Linton*, ii. pl. 777.
22. The pauper being a settled inhabitant of *A*, subsequently acquired a settlement in the township of *B*. The latter township afterwards ceased to exist as a place capable of maintaining its own poor. Held notwithstanding, that the previous settlement in *A*, having been extinguished, the pauper could not be removed thither from a third town as to the place of his last legal settlement. *Query*, whether in such a case a removal to the parish of which the township of *B*. formed a part, would not be good, *Res v. Saughton on the Hill*, ii. pl. 792.

F.

FAIR.

1. The lessee of a stall in a fair or market-town, is not rateable to the poor in respect

of the profits he derives therefrom, *Holledge's case*, i. pl. 154.

2. The profits of a fair are not rateable to the poor, *Res v. Brograve*, i. pl. 164.

FATHER.

See MAINTENANCE OF RELATIONS—
BASTARDS.

FARMER.

A farmer is not liable to the poor's rate for the stock on his land; but if he keep a larger stock than is necessary for the cultivation of his farm, he shall be rated with respect to such additional stock, *Res v. Barking*, i. pl. 145.

FELONY.

See ATTAINDER.

FERRY.

See POOR'S RATE, vii.

FISH.

Fish are tithable by custom, and the proprietors of such tithes are liable to be rated to the relief of the poor, *Res v. Carlyon* i. pl. 190.

FLEET PRISON.

1. The warden of the Fleet prison is liable to be rated to the poor in respect to the profits of his office, *Res v. Eyles*, i. pl. 183.
2. A prisoner in the Fleet, who rents a house within its rules of 10s. a year, thereby gains a settlement, *St. Margaret's Westminster v. St. Martin's Ludgate*, ii. pl. 127.

FOREIGNERS.

1. Foreigners having no place of settlement cannot be removed from the parish in which they land from abroad, to any other parish, *Coward's case*, ii. pl. 33.
2. But if a foreigner, not having gained a settlement, marries a woman who has a settlement, the children may be removed to her settlement, *Tynton v. King's Norton*, ii. pl. 49.

FORESTS.

The forests of England are extra-parochial; but if they lie within a vill, overseers may be appointed, and the inhabitants rated to the poor, *Res v. Rufford*, i. pl. 47.

FORGERY.

By 26 G.2. c. 33. § 16. "persons convicted of making a false entry of marriage in a

parish register, or of forging any such entry, or any licence, or destroying such register-book, shall suffer death."

FOUNDLINGS.

1. A foundling child must be provided for by the officers of the parish or place where it is found; and it is not necessary that they should have any order of justices for this purpose, *Hayes v. Bryant*, i. pl. 516.
2. And it is settled in the parish where found, unless the place of its birth can be discovered. *The cases of Clavehy and Burton*, ii. pl. 23.
3. But the place of birth is only the place of settlement of a foundling, until the place of its father's or its mother's settlement can be found, *Cripplegate v. St. Saviour's*, ii. pl. 27.
4. Except it be a bastard, and then it is settled where born, *Whitechapel v. Stepney*, ii. pl. 1.

FOUNDLING HOSPITAL.

See the statute 15 G. 3. c. 82.

FRAUD.

1. An appointment of overseers made on a Sunday, is *prima facie* clandestine and fraudulent, *Rex v. Butler*, i. pl. 37.
2. If an unmarried woman with child be fraudulently removed into a parish, her child, though born a bastard in such parish, shall not be settled there, but in the parish from whence she was fraudulently removed, *Teakesbury v. Twining*, ii. pl. 2.
3. If a man who is insolvent has conveyed his estate to trustees for the payment of his debts, and afterwards, before the trust is performed, get fraudulently into possession, a residence of forty days will not give a settlement, *Rex v. St. Michael's Bath*, ii. pl. 629.
4. And therefore if a person convey his estate to trustees to be sold, for the purpose of paying off first a mortgage, afterwards his other creditors rateably, and the surplus, if any, to himself, get clandestinely into the occupation of it, he cannot thereby gain a settlement, *Id. ibid.*
5. Fraud is a fact, and must be positively found by the sessions; for the court will not infer it from circumstances, however pregnant, *Rex v. Weston*, ii. pl. 989.
6. For fraud is a fact which must be expressly found, *Rex v. Llanbedergoch*, ii. pl. 999.
7. If the sessions state all the evidence and circumstances, on which their judgment is founded in a special case, the matter is

as much open to the determination of the court of king's bench, as it was to the justices at sessions, *Rex v. Tedford*, ii. pl. 984.

FRIENDLY SOCIETIES.

See BENEFIT SOCIETIES.

G.

GAMING.

A master, by the custom of London, may turn away his apprentice on account of his frequenting gaming-houses, *Woodroffe v. Farnham*, i. pl. 670.

GAOL.

See RELIEF OF THE POOR.

1. By 20 G. 3. c. 36. "bastards born in gaol, shall be settled in the mother's parish."
2. And before this statute it was held that if a woman, big with child, be sent to the house of correction, and be there delivered of a bastard, it shall be sent to that parish, from which the mother was sent to the house of correction, that being the place of her settlement, *Suckley v. Whitbora*, ii. pl. 5.
3. So of bastards born in a county gaol; for the gaol of a county is with respect to settlements, constructively situated in every part of the county, and such bastards follow the mother's settlement, *Elving v. Hereford*, ii. pl. 10.
4. Renting a house of 10*l.* a year within the rules of the FLEET, gives a settlement, *St. Margaret v. St. Martin*, ii. pl. 127.
5. The warden of the FLEET is liable to be rated to the poor, *Rex v. Eyles*, i. pl. 185.

GATE-KEEPERS.

1. By 15 G. 3. c. 84. § 56. gate-keepers on turnpike-roads, shall not be removed from the toll-house until actually chargeable.
2. A gatekeeper who resides in a turnpike house as servant to the collector, may thereby gain a settlement in the parish, as a person renting a tenement of above 10*l.* a year, *Rex v. Denbigh*, ii. pl. 148.

GIPSIES.

See VAGRANTS.

H.

HAMLET.

1. A hamlet, consisting of only one house and 400 acres of land, which has never been rated to the poor of the parish in which it is situated, cannot be charged to

the poor if it be not a *vill*, although it is not *extra-parochial*, *Rex v. Tamworth*,

i. pl. 56.

2. For a place must be a *vill* before separate overseers can be appointed, *Rex v. Bedfordshire*,

i. pl. 58.

3. But if it be a *vill* by reputation, it is sufficient, *Rex v. Eyford*,

i. pl. 60.

4. But in common acceptation *hamlet* and *vill* are used as synonymous terms, and therefore if A. be appointed as one of the overseers of the poor of the *hamlet* of B. in the parish of C., the place B. shall be intended to be a *vill*, *Rex v. Morris*,

i. pl. 65.

HARVEST-WORKERS.

By 13 & 14 Car. 2. c. 12. § 3. "harvest-workers, having a certificate from the minister and parish officers, shall not be apprehended as vagrants, nor shall they gain a settlement by residing out of their own parish."

HERBAGE AND PANNAGE.

1. *Q.* If the *herbage* and *pannage* of a park, which is the surplusage over and above the competent and sufficient pasture and feeding of the game, is rateable to the poor? *Jones v. Maunsell*,

i. pl. 176.

2. The ranger of a royal park is not, as such, rateable to the poor for the *herbage* and *pannage* of the park, *Lord Bute v. Grindall*,

i. pl. 185.

HERD.

A house or meadow with 10*l.* a year, in which a *HERD*, as a reward for his services, is permitted to live by a number of persons who have a right of common in the place where it is situated, is a *tenement*, although he pays no rent, *Simonburn v. Meltridge*,

ii. pl. 205.

HIRING AND SERVICE.

See SETTLEMENT BY HIRING AND SERVICE.

HOG-RINGER.

A person legally chosen *hog-ringer* of a parish for one year, at the court-leet of a manor, gains a settlement by serving such office, *Rex v. Whittlesea*,

ii. pl. 246.

HOSPITALS.

See SETTLEMENT.

1. Lands given by private donation to the use of a public hospital are not thereby

exempted from the poor's rate, *Anonymous*,

i. pl. 143.

2. The officers who reside in the respective apartments of *Chelsea Hospital*, and use such apartments as their *dwelling-houses*, are rateable to the poor, *Ayr v. Smallpeace*,

i. pl. 154.

3. But *St. Luke's Hospital* is not rateable, for there are no persons who dwell therein in the character of occupiers, *Rex v. St. Luke's*,

i. pl. 157.

4. Nor *St. Bartholomew's Hospital*,

i. pl. 161.

5. Bastards born in hospitals shall not be settled in the parish where born, but shall follow the mother's settlement, 13 G. 5. c. 82. § 5.

6. By 9 G. 5. c. 31. § 8. "no person admitted into the *Magdalen Hospital* as a penitent prostitute, or employed there as a servant, shall thereby gain a settlement in the parish where such hospital is situated."

7. By 13 G. 2. c. 29. "no child received into the *Foundling Hospital* shall, by virtue thereof, gain any settlement in the parish." See also 13 G. 2. c. 29.

HOUSE.

1. Persons coming into houses rated to the poor shall be liable to the rate assessed, in proportion to the time they have occupied the premises, 17 G. 2. c. 38. § 12.

2. If two several houses are inhabited by two families, they shall be rated separately, though they have but one entrance, *Tracey v. Talbot*,

i. pl. 121.

3. If the owner of a house occupy part of it, he is liable to be rated for the whole, unless there be a distinct occupation of the rest by some other person, *Rex v. St. Mary the Less*,

i. pl. 131.

4. A rate on lands and houses at 1*d.* in the pound, without making a distinction between farms, dwelling-houses, and cottages, is unequal, *Rex v. Butler*,

i. pl. 127.

5. But whether houses are to be rated in a different proportion from land, depends on circumstances, *Rex v. Sandwich*,

i. pl. 128.

6. A house used merely for the purpose of divine worship, is not rateable to the poor; for the owner, by preaching therein, does not become an occupier, *Rex v. Southwark*,

i. pl. 151.

7. Therefore if a house be converted into a *conventicle*, and used for no other purposes, it is not rateable to the poor, *Anonymous*,

i. pl. 152.

8. But if a house be converted into a chapel, and made to produce a certain annual

- profit, such profit is rateable, although the house is only made use of as a place of public worship, *Robson v. Hyde*, i. pl. 181.
9. But a house converted into an almshouse, of which no profit is made, but is entirely dedicated to purposes of charity, is not rateable, *Rex v. Waldo*, i. pl. 182.
 10. A house with a carding machine shall be rated additionally to the profits of the machine, *Rex v. Hogg*, i. pl. 186.
 11. A battery house, the property of the crown, and from which the officer who superintends it is removeable at pleasure, is rateable if the sessions find that such officer is the occupier thereof; but otherwise *quære*, *Rex v. Hurdin*, i. pl. 191.
 12. Houses built on lands embanked from the Thames, in pursuance of 7 G. 3. c. 37., which vests those lands in the owners free from taxes, are not liable to be assessed to the general land-tax imposed by the 27 G. 3., though such act is conceived in general terms, and is subsequent in point of time to the act creating the exemption, *Williams v. Pritchard*, i. pl. 205.
 13. Nor are such houses liable to the rates imposed by 11 G. 3. c. 19., *Eddington v. Borman*, i. pl. 194.
 14. In what manner renting a house shall be considered as a tenement, so as to give a settlement, ii. p. 81 to 172.

HOUSEHOLDERS.

1. Overseers must be stated to be "substantial householders in the parish" in the order of appointment, *Rex v. Weobley*, i. pl. 5.
2. But these words "substantial householders" are to be taken relatively; and therefore persons though poor may be appointed, if there are no opulent householders in the parish, *Rex v. Stubbs*, i. pl. 7.
3. Nor have the words "substantial householders" any reference to sex, and therefore, if there be no other householder, a woman may be appointed, *Rex v. Stubbs*, i. pl. 15.

HOUSEHOLD FURNITURE.

1. Household furniture is not rateable to the poor, *Rex v. White*, i. pl. 199.
2. In renting a tenement of 10*l.* a year, if the landlord furnish the tenement, yet it shall be considered of that value without the furniture, unless the contrary appear, *Rex v. Whitechapel*, ii. pl. 152.

HUSBAND AND WIFE.

See EVIDENCE, *passim*.

1. Formerly a man who married a woman liable to maintain a poor relation, and

- received an estate with her in marriage, was liable to maintain such poor relation, *City of Westminster v. Gerrard*, i. pl. 456.
2. Because by the marriage he acquired and possessed himself of the means and funds, by and out of which the poor relation was entitled to be maintained, and *transit cum onere*, he took the wife with this charge and burden, *Gerrard's case*, i. pl. 457.
 3. And therefore a husband was held liable to maintain his wife's children by a former husband, *Rex v. St. Botolph's, Aldgate*, i. pl. 444.
 4. But the contrary is now determined, *Tubb v. Harrison*, i. pl. 452.
 5. And therefore one who marries a widow, having children by her former husband, is not bound to maintain such children, though they were maintained by the widow before her second marriage, when her second husband acquired her former means, *Cooper v. Martin*, i. pl. 453.
 6. But although a husband is not bound to provide for the children of his wife by a former husband, yet if he take them into his house, and they become part of his family, he shall be deemed to stand *loco parentis*, and be liable in a contract made by his wife for their education, *Stone v. Carr*, ii. pl. 454.
 7. And his maintaining such children is a good consideration for a promise by them, when they come of age, to repay the expences of their maintenance respectively, especially where the second husband is a man of small substance, and the children have a competent provision to receive when they come of age, which was to accumulate for them in the mean time, and he received no allowance out of the fund, *Cooper v. Martin*, i. pl. 453.
 8. If a husband be impotent, the children are bastards, *Forcroft's case*, i. pl. 490.
 9. But the impotency must be positive, *Lo-mas v. Holnden*, i. pl. 498.
 10. To bastardize the issue of a married woman, it must be proved that the husband had no access, *Pendrel v. Pendrel*, i. pl. 497.
 11. A wife may prove *criminal conversation*, but not *non-access*, *Rex v. Reading*, i. pl. 500.
 12. If non-access be proved, the justices may make an order of bastardy without enquiring whether the husband be alive or dead, *Rex v. Bedall*, i. pl. 502.
 13. But it cannot be made on the wife's testimony alone, *Rex v. Rooke*, i. pl. 504.
 14. But it may be made on other evidence than the husband's non-access, *Thompson v. Sawl*, i. pl. 506.

15. A wife shall take her husband's settlement, *Appotens v. Dunswell*, ii. pl. 102.
16. The residence of a wife upon her husband's estate will not change her husband's settlement, *Rex v. Aythorp Rooding*, ii. pl. 104.
17. The settlement of the wife is suspended during the coverture; but if her husband have no settlement, or it cannot be found, if she become poor, she shall be sent to the settlement she had gained in her own right, *Rex v. Wilebro' Green*, ii. pl. 105.
18. For in such cases her settlement is not suspended during the coverture, *Appotens v. Dunswell*, ii. pl. 106.
19. Thus where the pauper had married an Irish sailor, who had gained no settlement in England that his wife had ever heard of, she was held entitled to maintenance from the parish in which she was settled in her own right, although she had heard two months before her removal, that her husband was still alive, and believed the information to be true; for a maiden settlement continues through life if another settlement be not acquired, *Rex v. St. Batolph Bishopsgate*, ii. pl. 109.
20. A wife may be removed alone to her husband's settlement, *St. Michael Bath v. Nunnery*, ii. pl. 110.
21. And on the removal of a woman as a wife, the place WHERE, &c. shall be intended the place of her husband's settlement, *Rex v. Ironacton*, ii. pl. 111.
22. Therefore the removal of M. B. as the wife of S. B. is good, without stating that the place WHERE, &c. was her own settlement, or her settlement in right of her husband; for it is her "last legal settlement," which must be that of her husband, *Rex v. Higher Walton*, ii. pl. 112.
23. For if the absence of the husband be only temporary, and the wife be removed to any place *eo nomine* as the wife, it shall be presumed that the place to which she is removed is the place of her husband's settlement, although it be not so stated in the order of removal, *Rex v. Hiasworth*, ii. pl. 115.
24. S. P. *Rex v. Leigh*, ii. pl. 116.
25. If a foreigner, the husband of an English woman, whose father was certificated, live with and support his wife and family in the certificated parish, without having gained a settlement, his wife, although she asks temporary relief from the certificated parish, cannot be removed from him to the parish from which her father was certificated, and in which she was settled by parentage, *Rex v. Carleton*, ii. pl. 115.
26. On the removal of a wife, it is enough, in the first instance, to prove her maiden settlement, *Rex v. Ryton*, ii. pl. 114.
27. For it may be the husband had no settlement, and if he has, her maiden settlement continues, until that which she has in right of her husband is discovered, *Rex v. Woodsford*, ii. pl. 118.
28. And the presumption that she has a settlement in right of her husband, cannot be set up against the fact of her maiden settlement; for that settlement shall be presumed her husband's settlement, until the contrary be shown, *Rex v. Hedsor*, ii. pl. 119.
29. If husband and wife be certificated, and the wife be removed to the certifying parish by an order which is unappealed from, this concludes the husband's settlement to be in the same parish, though she was not removed as his wife, and he had gained a settlement in the parish to which the certificate was given, *Rex v. Trowcaster*, ii. pl. 120.
30. A wife whose husband is abroad may gain a settlement by hiring before his death, and a continued service under such hiring for a year after his death, although his death was not known until the year commenced, *Rex v. Hensingham*, ii. pl. 117.
31. Formerly the declaration of a husband, while living, respecting his settlement, was admissible evidence after his death, *Rex v. St. Sepulchre's*, ii. pl. 482.
32. See also *Rex v. Bury*, ii. pl. 825.
33. And *Rex v. St. Michael Bath*, ii. pl. 601.
34. But now neither the hearsay of a pauper who is dead, nor his *ex parte* examination in writing, taken on oath before two magistrates, touching his settlement, are admissible evidence of such settlement, *Rex v. Ferry Frystone*, ii. pl. 487.
35. S. P. *Rex v. Nuneham Courtney*, ii. pl. 486.
36. S. P. *Rex v. Abergwilly*, ii. pl. 488.
37. The husband of an administratrix who is entitled as a trustee to a lease for years, is not removable from such an estate, and by a residence of 40 days thereon, gains a settlement, *Mursley v. Grandborough*, ii. pl. 609.
38. A wife who on being left by her husband, goes and resides on his estate 40 days by herself, does not thereby gain a settlement for her husband, and therefore not for herself or her children, *Rex v. Aythorp Rooding*, ii. pl. 616.
39. The husband of a woman who is possessed of a cottage conveyed to her by a person who had been in possession 30 years, shall gain a settlement by 40 days'

- residence on such estate, although the person conveying it to the wife had no title, *Rex v. Brungwyn*, ii. pl. 625.
40. A conveyance after marriage by a wife's father to the husband only of an estate under the value of 30*l.*, it appearing to be granted on natural affection, and intended for the use of both husband and wife, is not a purchase within the statute of 9 G. 1. c. 7. § 5., *Rex v. Charlton*, ii. pl. 635.
41. A husband may gain a settlement by residing on an estate, vested in trustees for the separate use of his wife, *Rex v. Offchurch*, ii. pl. 656.
42. If a single woman purchase a leasehold tenement for 6*l.* for the remainder of 1000 years, and afterwards marries, the husband by a residence on the premises gains a settlement, *Rex v. Ilmington*, ii. pl. 622.
43. If husband and wife be certificated, and the husband purchase an estate in the certificated parish, the wife and her children born under such certificate, gain a settlement by a residence of 40 days on this estate, after her husband's death, *Rex v. Long Wittenham*, ii. pl. 686.
44. If a parish give a certificate to a man and woman as husband and wife, such parish cannot afterwards controvert the fact of marriage, *Rex v. Headeorn*, ii. pl. 734.
45. See also *Rex v. Ipsley*, ii. pl. 738.

HUSBANDMAN.

- A husbandman, though he has actually served three years in the militia and is married, may be removed, *Rex v. Gwenop*, ii. pl. 692.

I.

IDIOT.

1. An apprentice appearing to be an idiot, may be discharged from his indentures, *Anon.* i. pl. 569.
2. The father's settlement shall be conferred on his legitimate child, though such child be an idiot, *Hard's case*, ii. pl. 34.

INCORPORATED DISTRICTS.

1. By 22 G. 3. c. 83. § 1. "so much of 9 G. 1. c. 7., as respects hiring out the poor, is repealed as to incorporated parishes."
2. By 22 G. 3. c. 83. § 2. "Visitors and guardians of incorporated parishes may make agreements for the diet and clothing, &c., of persons sent to the poor houses."
3. See 22 G. 3. c. 83. § 3. "conditions on which parishes shall be entitled to the

benefits of this act." And see 35 G. 3. c. 35.

4. By 22 G. 3. c. 83. § 4. "two or more parishes may unite, with the approbation of two justices, for the purpose of this act." But see 35 G. 3. c. 35.
5. By 22 G. 3. c. 83. § 5. "parishes more than ten miles distant from the poor-house excluded."
6. By 22 G. 3. c. 83. § 6. "notice for meetings to be given in the church, &c.—qualification of voters."
7. By 22 G. 3. c. 83. § 7. "justices to appoint a guardian for each parish, &c.—Duty and powers of the guardians."
8. By 22 G. 3. c. 83. § 8. "churchwarden or overseer to receive the poor's rate—how to be applied."
9. By 22 G. 3. c. 83. § 9. "justices to appoint a governor of each poor-house."
10. By 22 G. 3. c. 83. § 10. "directions for the appointment of visitors—visitors may appoint a deputy-governor, &c., to obey the visitor."
11. By 22 G. 3. c. 83. § 11. "single parishes may have a visitor appointed."
12. By 22 G. 3. c. 83. § 12. "a treasurer to be appointed—his duty."
13. By 22 G. 3. c. 83. § 13. "vacancies occasioned by death of officers, &c. how to be supplied."
14. By 22 G. 3. c. 83. § 14. "at what time the offices of guardian, governor, &c., shall determine."
15. By 22 G. 3. c. 83. § 15. "justices in a different limit may act in certain cases."
16. By 22 G. 3. c. 83. § 16. "justices may appoint special sessions for executing the powers of this act."
17. By 22 G. 3. c. 83. § 17. "guardians shall provide houses and proper utensils," &c.
18. By 22 G. 3. c. 83. § 18. "poor-houses, where to be situated."
19. By 22 G. 3. c. 83. § 19. "on what conditions lands, &c., shall be rented."
20. By 22 G. 3. c. 83. § 20. "buildings to be paid for by the guardians; visitors and guardians empowered to borrow money." But see 45 G. 3. c. 110. by which part of this clause is repealed.
21. By 22 G. 3. c. 83. § 21. "visitors and guardians to be incorporated—their name."
22. By 22 G. 3. c. 83. § 22. "incapacitated persons empowered to sell lands," &c.
23. By 22 G. 3. c. 83. § 25. "money paid for such lands, &c. to be laid out in the purchase of other lands, &c., to be settled to the same uses."
24. By 22 G. 3. c. 83. § 24. "poor to be maintained at the general expence of the respective parishes—guardians to meet

- monthly—treasurer at each meeting to produce an account of the debt incurred for utensils, furniture, &c.—and also an account of the victuals, beer, &c., used in the poor-house.”
23. By 22 G. 3. c. 83. § 25. “penalty on persons refusing to deliver up poor’s rate, &c., after proper demand.”
24. By 22 G. 3. c. 83. § 26. “penalty on guardians who shall neglect to attend monthly meetings.”
27. By 22 G. 3. c. 83. § 27. “waste lands adjoining to poor-houses may be inclosed, with consent of the lord of the manor,” &c.
28. By 22 G. 3. c. 83. § 28. “persons sent to poor-houses to deliver an order signed by a guardian.”
29. By 22 G. 3. c. 83. § 29. “what persons may be sent to the poor-houses.”
30. By 22 G. 3. c. 83. § 30. “how poor children are to be provided for.”
31. By 22 G. 3. c. 83. § 31. “idle persons who neglect to provide for their families shall be prosecuted by the guardians.”
32. By 22 G. 3. c. 83. § 32. “how guardians are to proceed, relative to poor persons who cannot get employment.”
33. By 22 G. 3. c. 83. § 33. “guardians to provide suitable clothing for the persons they send to the poor houses.”
34. By 22 G. 3. c. 83. § 34. “rules and orders contained in the schedule to be observed at the poor-houses.”
35. By 22 G. 3. c. 83. § 35. “justices, on complaint that any guardian hath refused relief to any poor person, may direct such guardian to send the complainant to the poor-house: if the justice shall find that the complainant is an idle person, he may commit him to the house of correction.”
36. By 22 G. 3. c. 83. § 36. “guardians not to be summoned before the justice, unless the complainant shall have applied both to the guardian and visitor.”
37. By 22 G. 3. c. 83. § 37. “application of penalties inflicted on guardians.”
38. By 22 G. 3. c. 83. § 38. “directions relative to such poor persons who shall be afflicted with sickness, &c., when at a distance from their parish.”
39. By 22 G. 3. c. 83. § 39. “not to alter the settlement of any person,” &c.
40. By 22 G. 3. c. 83. § 40. “penalty on persons who shall embezzle or waste goods, &c., committed to their care in any poor-house.”
41. By 22 G. 3. c. 83. § 41. “penalty on enticing or removing pregnant women, &c., from one parish to another, without an order from two justices.”
42. By 22 G. 3. c. 83. § 42. “penalty on vi-

- sitors, guardians, and governors, who shall not furnish provisions, &c. for the poor-house to which they belong.”
43. By 22 G. 3. c. 83. § 43. “guardians, with the approbation of the parishioners, may sell houses provided by the parish for the poor thereof.”
44. By 22 G. 3. c. 83. § 44. “this act not to extend to any place which shall not adopt the provisions thereof.”
45. By 22 G. 3. c. 83. § 45. “penalties and forfeitures how to be recovered and applied.”
46. By 22 G. 3. c. 83. § 46. “persons aggrieved may appeal to the quarter sessions, whose determination shall be final.”
47. Where the guardian and visitor of a parish, which had adopted the provisions of the statute 22 G. 3. c. 83. upon application to them for relief by a pauper for herself and children, directed them to be received into the poor-house; held, that one justice had not any jurisdiction, upon complaint to him by the pauper, to order relief out of the poor-house; and therefore where defendant was convicted in a penalty for disobeying such order, which conviction was confirmed at the sessions, the court quashed the order of sessions, *Res v. Laughton*.
48. Two justices in petty sessions may direct the regulations prescribed by 22 G. 3. c. 83. and 49 G. 3. c. 124. § 5.
49. Two justices may direct the regulations specified in schedule of 22 G. 3. c. 83., to be observed in work-houses, where no master or mistress is appointed to superintend, and may alter such regulations, 50 G. 3. c. 50. § 1.
50. Contractors for providing for the poor, shall be subject to the jurisdiction of the justices, as overseers of the poor, *Id.* § 2.
51. Justices may appoint the keeper of the workhouse to be governor, *Id.* § 3.
52. Penalty on embezzling goods, *Id.* § 4.

INDEMNITY.

See BASTARDS.

INDENTURES.

See APPRENTICES.

INDICTMENT.

1. An indictment will lie against the churchwardens of a parish, for refusing to join with the overseers in making a poor’s rate, *Res v. Arnold*, i. pl. 30.
2. An indictment will lie for disobeying an order of sessions, to pay costs, on the dismission of an appeal from a poor’s rate,

notwithstanding the 17 G.2. c. 38. gives a remedy by distress, *Res v. Byce*,

i. pl. 559.

3. An indictment will lie against overseers, for refusing to make a rate to reimburse constables, *Res v. Barlow*, i. pl. 569.
4. An indictment will lie against overseers, for refusing to account within the time limited, for the monies they have received for the relief of the poor, *Res v. Comminges*, i. pl. 370.
5. And in such an indictment it is not necessary to set forth the sums of money received, *Id. ibid.*
6. And it is good, though it charge that they *et uterque eorum* did convert the money; for the cheat of one is the cheat of the other, *Id. ibid.*
7. An indictment will lie against overseers for not relieving the poor, or for relieving them unnecessarily, *Tauney's case*, i. pl. 371.
8. An indictment will lie for disobeying any order of the justices, *Res v. Smith*, i. pl. 461.
9. An indictment lies for refusing to accept the office of overseer, or for disobedience to an order of justices, or to an act of parliament, *Res v. Jones*, i. pl. 377.
10. An indictment lies against overseers, for not receiving a pauper removed by an order of justices, *Res v. Davis, et al.* i. pl. 379.
11. Same enacted by 13 & 14 Car. 2. c. 12. § 8.
12. And in general the Court will not quash an indictment against an overseer, but will drive him to demur, *Res v. Parry*, i. pl. 580.
13. An indictment lies for disobeying an order of maintenance, *Res v. Robinson*, i. pl. 455.
14. In an indictment on the 19 G.3. c. 72. for the relief of substitutes in the militia, the order of maintenance must be stated or alluded to; and the orders of reimbursement must be made at the same time with the order of maintenance, directing that whatsoever shall be paid under the one, shall be repaid under the other, *Res v. White*, i. pl. 479.
15. And where the jurisdiction exercised, is founded on a former order, a general reference to such order is not sufficient, *Res v. Winship*, i. pl. 466.
16. But an indictment on 21 G.3. c. 51. for disobeying an order of sessions, on an appeal against servants' tax, need not state the proceedings before the justices, *Res v. Mytton*, i. pl. 479 a.
17. An indictment that the defendant was appointed "overseer of the parish of A.," and that he afterwards refused "to take

the said office of overseer of the parish to which he was so appointed," is good on demurrer, *Res v. Burder*, i. pl. 41.

INFANT.

1. An infant, whether legitimate or illegitimate, shall, until it attains the age of seven years, be removed with its mother for nurture, although settled in a different parish, *Res v. Hemlington*, i. pl. 515.
2. An infant bastard left unprovided for, must be maintained by the parish, and for this an order of justices is not necessary, *Hays v. Bryant*, i. pl. 516.
3. An infant who has bound himself apprentice cannot be sued on the covenant of his indentures, *Gilbert v. Fletcher*, i. pl. 624.
4. And therefore the father or some friend usually joins in the indentures, who becomes liable for the performance of all the covenants, even those which were to be performed by the apprentice himself, *Branch v. Ewington*, i. pl. 639.
5. For the very end of binding the father or friend is, that they may answer for the wrong which may be done by the apprentice to his master, *Whitley v. Loftus*, i. pl. 639.
6. If a poor infant bind himself apprentice, the allowance of the justices is not necessary, *Res v. St. Mary Reading*, i. pl. 705.
7. An infant apprentice cannot consent to the cancelling of his indentures, *Res v. Ecclesall Bierlow*, i. pl. 711.
8. Nor can the indentures of a parish apprentice be cancelled by his consent after he comes of age; for the legislature has made the consent of others necessary in this case, *Res v. Langham*, i. pl. 716.
9. But see *Res v. Harburton*, i. pl. 718.
10. For his consent, being under age, is exactly as if he had given no consent; he cannot, as an infant, consent to his own discharge, *Res v. Austery*, i. pl. 709.

INFORMATION.

1. An information in the nature of *quo warranto* will not lie against a churchwarden; for if he be wrongfully admitted to his office, yet this is no usurpation on the rights of the crown, *Res v. Daunsey*, i. pl. 358.
2. An information lies against an overseer for removing a pauper to prevent her becoming chargeable, *Res v. Busby*, i. pl. 375.
3. But if an overseer make an alteration in a poor rate, after it has been allowed by two justices, with the approbation of the justices, an information will not lie, *Res v. Barratt*, i. pl. 382.

4. An information will lie, for conspiring to take away an infant out of the custody of her putative father, *Rex v. Cornfort*,
i. pl. 515.

INROLLMENT.

See APPRENTICES.

IRREMOVABLE PERSONS.

1. One who is resident on an estate granted to him for lives, in consideration of two guineas fine, and one shilling rent, is irremovable therefrom, although actually chargeable; and although he cannot gain a settlement by forty days' residence, as on his own estate under 9 G. 1., the consideration being under 50*l.* *Rex v. Martley*,
ii. pl. 645.
2. For by Magna Charta "none shall be disced of his freehold; and therefore a wife, who, on being left by her husband, goes and resides on his estate for forty days by herself, although she does not thereby gain a settlement, cannot be removed from the parish," *Rex v. Aythorp Reading*,
ii. pl. 616.
3. And to render the party irremovable, the residence need not be on the estate; if it be in the parish it is sufficient, *Rex v. Souten*,
ii. pl. 675.
4. Even though he is only in the parish for the purpose of making repairs on the estate, *Rex v. Houghton le Spring*,
ii. pl. 678.
5. Where a son, having agreed to purchase a piece of land for 65*l.*, applied to his father, who consented to advance 50*l.* left to his wife, on condition that a house should be built on the land by the son, which the father and mother were to have for their lives and the life of the survivor, and afterwards the same to go to the son, but the father and mother were not to sell or dispose of it, nor to take any other family into the house: but this agreement was only by parol; and afterwards the father advanced the 50*l.*, and the son completed the purchase, and the land was conveyed to him in fee; and he built a house, of which the father and mother took possession with his consent, and lived in it for three years, without paying any rent, when the father died, and the mother continued in possession. Held, that the father did not gain a settlement by the residence on the land, nor was the mother entitled to reside on it irremovably. *Rex v. Standon*,
ii. pl. 701.
6. By 9 & 10 W. 5. c. 11. "certificated persons are irremovable until actually chargeable."
7. And a certificated person who never asks relief, cannot be considered as actually chargeable, *Rex v. St. Mary Westport*,
ii. pl. 693.
8. "Officers, mariners, and soldiers who have set up trades in any parish, are irremovable until chargeable."
9. By 15 G. 5. c. 84. "gate-keepers on turnpike roads are irremovable until actually chargeable."
10. By 24 G. 5. c. 5. "officers, mariners, soldiers, and marines, who have been in service since 1763, and have set up trades, are irremovable until actually chargeable."
11. By 24 G. 5. c. 6. "the 24 G. 5. c. 5. is extended to militia-men and fencibles who have served three years, and been honourably discharged."
12. By 26 G. 3. c. 107. "the above provisions are extended to married militia-men in actual service."
13. By 53 G. 5. c. 54. "no certificated member of a benefit society shall be removed until actually chargeable."
14. By 35 G. 5. c. 101. "poor persons residing in tenements under 10*l.* a year, are irremovable until actually chargeable."
15. By 35 G. 5. c. 124. "woolcombers exercising their trade in any parish, are irremovable until actually chargeable."
16. A certificated person who receives relief during illness from a parishioner, does not thereby become actually chargeable to the parish, although the parish-officers reimburse the parishioner, *Rex v. Kingswood*,
ii. pl. 689.
17. It is only that part of a family that asks relief that is to be considered as chargeable, *Rex v. Framlingham*,
ii. pl. 690.
18. The poor belonging to one parish being under certificate, in a workhouse situate in another parish, are not removable therefrom as persons chargeable, because they are unable to work, *Rex v. St. Peter and St. Paul Bath*,
ii. pl. 691.
19. A husbandman, though he has actually served in the militia, is not a person irremovable under the above statutes, *Rex v. Guenop*,
ii. pl. 692.
20. Persons irremovable until chargeable must ask relief before they can be removed, *Rex v. St. Mary Westport*,
ii. pl. 695.
21. By 35 G. 5. c. 101. "persons convicted of larceny, and reputed thieves, may be removed as actually chargeable."
22. By 35 G. 5. c. 101. "unmarried women with child may be removed as actually chargeable."
23. Although such unmarried women is residing under a certificate, *Rex v. Great Yarmouth*,
ii. pl. 694.

24. But a single woman living in service with her master, is not removable under 35 G. 3. c. 101. against the consent of both herself and her master; although adjudged by the order of removal to be with child, and therefore deemed chargeable to the parish in which she was serving; for that statute does not make persons removable who were not proper objects of removal before, but only leaves certain descriptions of persons exempted out of the act liable to be removed, though not in fact chargeable, if otherwise proper objects of removal, *Res v. Alseley*, ii. pl. 695.
25. A married woman pregnant with a child, which when born would be by law a bastard, is removable as an unmarried woman under 35 G. 3. c. 101. § 6. *Res v. Tibbenham*, ii. pl. 696.
26. And being pregnant with a bastard, is sufficient evidence of chargeability to warrant a removal, unless evidence to the contrary be given, *Id. ibid.*
27. And the order of removal may charge such person generally as actually chargeable, without setting forth in what manner chargeable, *Id. ibid.*
28. So also if the order states that the party "by being pregnant was deemed to have become chargeable," it is sufficient, *Res v. Diddlebury*, ii. pl. 697.
29. But if it merely adjudged that the person removed "was with child and unmarried," without drawing the conclusion that she was chargeable, it is bad, *Res v. Holm East Waver Quarter*, ii. pl. 699.
30. A labourer employed by his master to drive his cart into a parish with one load, and to return with another, and who broke his leg there by accident, which detained him for some time in such parish, by which he was relieved, is to be considered as casual poor, and as such not removable either under stat. 15 & 14 Car. 2. c. 12., or the stat. 35 G. 3. c. 101. *Res v. St. James in Bury St. Edmunds*. ii. pl. 698.
31. Where a pauper legally settled in the parish of A., having met with a severe accident in the parish of B., was carried into an adjacent parish to be cured, and remained there for a long period of time: Held, that he was to be considered as casual poor in the parish of C., and was irremovable; and that an order of removal to A., suspended under the powers of 35 G. 3. c. 101. and subsequent order on the overseers of A., to pay the intermediate charges incurred by the parish of C. were invalid, *Res v. St. Laurence Ludlow*, ii. pl. 703.
32. A. hired a house for 10l. a year, and put into it his furniture, worth above 15l., and lived in it above a year. Having applied for relief, the parish officers were compelled by a magistrate's order to grant it. After the relief was granted the landlord demanded his rent, but allowed A. a fortnight's time to pay it. Before that time was expired, and before the rent was paid, the pauper was removed to another parish by an order of two justices. After he had been removed he sold his furniture and paid the year's rent: held, first, that the parish officers having been compelled to grant relief, A. had thereby become actually chargeable, and was therefore removable by stat. 35 G. 3. c. 101. although he had resided above 40 days on the tenement: held, secondly, that at the time when the order of removal was made, he had not gained any settlement in the removing parish, because he had not then paid a year's rent, as required by 59 G. 3. c. 50. *Res v. Amphill*, ii. pl. 704.
33. An order of removal, merely adjudging that the person removed was with child and unmarried, without drawing the conclusion that she was chargeable, is bad, *Res v. Holm, East Waver Quarter*, ii. pl. 699.
34. A pauper renting a house in the parish of A. where she received occasional relief, and having relations in the adjoining parish, but no settlement in either, after having been sent backwards and forwards from one to the other, was at last taken by the parish officer of A. into B., by which she was relieved, and threatened to be sent to prison if she returned again into A. Held, that her residence in B. under such circumstances, did not prevent her removal from thence by an order of justices to her place of settlement, *Res v. Birmingham*, ii. pl. 700.
35. A person occupying, at 4l. a year, part of a dwelling-house of the annual value of 18l. does not, since 35 G. 3. c. 101. § 4., acquire a settlement, although he be rated and pay to the church and poor rate for the whole house, *Res v. Penryn*, ii. pl. 702.

JUSTICES.

1. By 45 Eliz. c. 2. § 1. "the appointment of overseers must be under the hands and seals of two justices."
2. See *Res v. Arnold*, i. pl. 20.
3. The mayor of a corporation and the justice of a county, are not two justices within this act, *Res v. Butler*, i. pl. 23.

4. The two justices must sign and seal the appointment in the presence of each other, *Rex v. Forrest*, i. pl. 23.
5. By 26 G. 2. c. 27. "orders, &c. made by two or more justices, are good, without stating *quorum unus*," &c.
6. By 17 G. 2. c. 38. § 2. "two justices, on an overseer dying or becoming insolvent, may appoint another for the remainder of the year."
7. By 45 Eliz. c. 2. § 8. "magistrates of corporations shall have the same power as justices of counties."
8. By 43 Eliz. c. 2. § 9. "magistrates and justices, when a parish lies part within a city and part within a county, shall only act for that part of the parish that is within their respective jurisdictions."
9. By 45 Eliz. c. 2. § 10. "justices and magistrates neglecting to appoint overseers, shall forfeit 5*l.* to the poor."
10. The two justices have a discretionary power to select proper persons to serve the office of overseer. But *qu.* if they can appoint an acting justice of the peace to that office, *Rex v. Gayer*, i. pl. 14.
11. By 43 Eliz. c. 2. "two or more justices must allow a poor's rate."
12. The allowance by the justices is a ministerial act, and matter of form; *Rex v. Uttoxeter*, i. pl. 83.
13. For the churchwardens and overseers have the power of making the rate, and whether it be a fair rate or not, is to be enquired of on an appeal to the sessions; and neither the two justices who sign it nor even the court of King's Bench can examine into its propriety, *Rex v. Dorchester*, i. pl. 84.
14. And this allowance is to be by two justices out of sessions, i. pl. 79.
15. Justices of a county cannot allow a rate made by overseers of a borough, *Rex v. Folly*, i. pl. 86.
16. Justices may be compelled by *mandamus* to allow a poor rate, *Rex v. Edwards*, i. pl. 87.
17. By 16 G. 2. c. 18. § 1. "justices may enforce laws relating to parish taxes, &c. though they are chargeable themselves."
18. By 28 G. 3. c. 49. § 1. "justices acting for two or more counties, being adjoining counties, may act as justices in all matters relating to either of the said counties; and all their acts shall be as valid as if done in the county to which the act relates, provided such justices be personally resident in one of the counties at the time of doing the acts, and the warrants, &c. be executed by the officer of the proper county."
19. By 9 G. 1. c. 71. § 3. and 28 G. 3. c. 49.

- "justices of counties, resident within cities counties of themselves, cannot intermeddle in any matters arising within the cities or towns, which are counties of themselves."
20. See *Rex v. St. Mary's in Taunton*, i. pl. 283.
21. By 43 Eliz. c. 2. § 4. "justices may commit overseers who refuse to account."
22. Justices may *fine* overseers, as well as imprison them for refusing to account, *Rex v. Sedgewold*, i. pl. 316.
23. But if the justices under 43 Eliz. c. 2. commit an overseer for not accounting, and on a *habeas corpus* it appears that the overseer did account, he shall be discharged, although the account was merely a gross account of his receipts and payments, without stating particulars, *Rex v. Corrocke*, i. pl. 310.
24. And where the particulars are stated, the justices cannot commit merely because they disapprove of the account; for they ought to receive it, and form a balance by striking out what is wrong, *Rex v. Walrand*, i. pl. 314.
25. The authority given to justices by 43 Eliz. c. 2. respecting overseers' accounts, cannot be delegated, *Rex v. Turner*, i. pl. 341.
26. By 7 Jac. 1. c. 5., and 21 Jac. 1. c. 12., "if an action be brought against a justice for any thing done concerning his office, he may plead the general issue, and give the special matter in evidence."
27. And shall be allowed double costs.
28. By 24 G. 2. c. 44. § 1. "no writ shall be sued out against any justice, for what he shall do in the execution of his office, till notice given to him."
29. By 24 G. 2. c. 44. "he may tender amends, and plead the same in bar."
30. No plaintiff shall recover without proof of notice.
31. The justice may pay money into court.
32. No evidence to be received of any cause of action, except that contained in the notice.
33. By 24 G. 2. c. 44. "justices granting warrants, shall be made defendants in actions brought against officers for executing them."
34. Justices cannot award an *attachment* against overseers, *Rex v. Bartlet*, i. pl. 354.
35. By 43 Eliz. c. 2. "two justices are to judge, whether the excuse of overseers for absenting themselves from the monthly meetings in the church, are allowable."
36. By 43 Eliz. c. 2. "two justices may rate parishes in aid."
37. By 18 G. 3. c. 19. "a justice shall audit constables' accounts."
38. By 6 G. 2. c. 81. § 3. "justices shall sum-

- mon overseers to show cause, why the reputed father of a bastard child should not be discharged."
39. Justices of the peace acting for any county at large, &c. may act as such, in places having exclusive jurisdiction within or adjoining such county. 1 & 2 G. 4. c. 63.
40. In places having a limited number of justices, any of such justices empowered to act, though not of the quorum. 4 G. 4. c. 27.
41. The justices, though not "in or next the limits" of the church of the parish in which the child is born, may act, *Rex v. Skinn*, i. pl. 527.
42. The justices have authority to commit a soldier, for disobeying an order of bastardy; for he is not protected against such commitment by the mutiny act, *Rex v. Archer*, i. pl. 53.
43. For the clause in the mutiny act, which exempts soldiers from arrest, is clearly confined to civil actions; but a proceeding under 6 G. 2. c. 51. against the reputed father of a bastard child, cannot be considered in the nature of a civil action, *Rex v. Bowen*, i. pl. 534.
44. Both justices must be present at the same time and place, when a woman is examined and committed for not filiating a bastard child, *Billings v. Prim*, i. pl. 545.
45. So the two justices in assenting to and signing the indenture of a parish apprentice, must be present with each other, for this is a case which requires very seriously the exercise of their discretion, *Rex v. Hamstall Ridware*, i. pl. 721.
46. But if the two magistrates be together at the time the assent is given, the indentures are good, though they afterwards sign them separately, *Rex v. Wmwick*, i. pl. 725.
- enquire into a fact which appears doubtful on the original order of removal, though the sessions stated no case for the opinion of the court, *Rex v. Mergan*, ii. pl. 1003.
6. And in what cases the court will send back a case to be restated, see ii. pl. 984—999.
7. If the sessions confirm an order, the court will not quash it, but will quash the order of sessions, and direct the sessions to notice the order of two justices, *Rex v. Yarpole*, ii. pl. 1004.
8. If an order of removal be confirmed at the sessions, and both orders be afterwards removed into the king's bench by *certiorari* on a case reserved, and this court disapprove of the orders for want of jurisdiction of the removing magistrates appearing on the face of the original order, the court will quash both the orders, without remitting the matter back to the sessions to quash the original order, for the purpose of enabling them to give maintenance according to the 9 G. 1. c. 7., and at any rate they will not admit an application for amending their judgment for quashing both orders, made in the term subsequent to the judgment so pronounced, *Rex v. Moor Critchill*, ii. pl. 1005.

L.

LARCENY.

By 35 G. 3. c. 101. "persons who have been convicted of larceny or other felony, and who shall not be able to give a satisfactory account of themselves or of their way of living, shall be removed as persons actually chargeable."

LABOURERS.

See SETTLEMENT BY HIRING AND SERVICE.

LAND.

- K.
- KING'S BENCH.
1. The king's bench will not quash an order of sessions, except for error in form, *Anonymous*, ii. pl. 1000.
2. Nor will the court reverse an order of sessions, unless it affirm a bad order, *South Cadbury v. Braddon*, ii. pl. 1001.
3. If a sessions be adjourned, pending the settlement of a special case, the court will grant a *mandamus* to complete the case, *Rex v. The Justices of Sussex*, ii. pl. 1002.
4. See also *Rex v. Justices of Westmoreland*, ii. pl. 983.
5. So the court may order the sessions to
1. Lands may be rated to the poor's rate at three-fourths of their yearly value, *Rex v. Brograve*, i. pl. 125.
2. And the value must be fixed, according to the real worth of the land at the time the rate is made; for the rent reserved on the lease thereof, is not conclusive evidence of its yearly value, *Rex v. Skingle*, i. pl. 308.
3. A rate on the one-half of the fully early value or rack-rent of a farm, is good, *Rex v. Hardy*, i. pl. 126.
4. A rate on lands and houses at 1d. in the pound, without distinction, is bad, *Rex v. Butler*, i. pl. 127.
5. Whether lands and houses are to be rated

- in different proportions depends on local circumstances, *Rex v. Sandwich*, i. pl. 128.
6. A person living out of a parish, but having land in his own occupation and manurance therein, is rateable for such lands to the parish in which they lie, *Jeffery's case*, i. pl. 133.
 7. The poor's rate is a charge upon the occupier with respect to the land occupied, *Barby's case*, i. pl. 135.
 8. Same point, *Theed v. Starkey*, i. pl. 150.
 9. Hospital lands are rateable to the poor; for no man by appropriating his lands to an hospital can exempt them from taxes to which they were before liable, *Anonymous*, i. pl. 143.
 10. A corporation seized of lands in fee for their own profit is rateable to the poor, *Rex v. Gardner*, i. pl. 167.
 11. Land from which there issues a mineral spring, is rateable for the profits of the spring as well as the value of the land, *Rex v. Miller*, i. pl. 174.
 12. Lands purchased by a company and converted into a dock are rateable to the poor, *Rex v. Hull Dock Company*, i. pl. 184.
 13. The ranger of a royal park is rateable as such for the inclosed lands in the park which yield a certain annual profit, *Lord Bute v. Grindall*, i. pl. 185.
 14. An exemption in a private statute of lands given to charitable purposes "from all taxes, charges, and assessments whatsoever," extends to the poor's rate, *Rex v. Scott*, i. pl. 193.
 15. So lands vested by a private statute in the owner free from taxes, are not liable to be rated, *Williams v. Pritchard*, 4 T. R. 2.
 16. So houses built on land embanked from the Thames, in pursuance of 7 G. 3. c. 57. are not liable to be assessed to rates made under the 11 G. 3. c. 29. *Eddington v. Burman*, i. pl. 194.
 17. But land given by deed for charitable purposes free from taxes, are rateable to the poor, *Rex v. Catt*, i. pl. 205.
 18. Land taken for a particular purpose, as that of growing potatoes during a portion of the year, is a tenement by which a settlement may be gained, *Rex v. Shenston*, ii. pl. 129.
 19. So is a lease of the fishing, with the spear, sedge, and flags, &c., *Rex v. Old Alford*, ii. pl. 135.
 20. So is the taking the hay-grass and after-math of a meadow, *Rex v. Stoke*, ii. pl. 136.
 21. So renting the fogs and aftergrass, *Rex v. Brampton*, ii. pl. 138.
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22. So a right of common in gross, *Rex v. Derringham*, ii. pl. 141.
23. Where a corporation were seized in fee of lands, which by the custom were annually meted out under the control of a leet jury, according to a certain stint, to such of the resident burgesses who chose to stock the same, they paying 19s. 4d. to each of the other burgesses who did not stock; the burgesses who so stocked are tenants in common of the lands so occupied by them, and as such occupiers are liable to be rated for the same to the poor, *Rex v. Watson*, i. pl. 216.
24. Uninclosed lands held by a corporation in fee, if stocked with cattle by the resident burgesses in right of their franchise, are rateable to the poor, *Rex v. Aberavon*, i. pl. 214.
25. *Quare*: If a person who has a mere permission to turn his cattle on another land, is rateable as an occupier, *Id. ibid.*

LAND SALE COLLIERY.

- A "land sale colliery" is a tenement by the renting of which a settlement may be gained, *Rex v. North Bedburn*, ii. pl. 133.

LEAD MINES.

See COAL MINE.

1. The lessees of lead mines who pay no rent, but only a certain part of the ore raised, are not rateable to the poor, *Smelting Lead Company v. Richardson*, i. pl. 159.
2. But the lessee of a lead mine who derives a profit from the lot and cope, which are certain duties paid to him by the adventurer or person who works the mine, is rateable to the poor for such profits, *Rowls v. Gells*, i. pl. 169.

LIGHT-HOUSE.

- The profits of a light-house are not rateable to the poor, *Rex v. Rebowe*, i. pl. 166.

LODGER.

1. A lodger who rents apartments unfurnished at above 10s. a year, gains a residence by residing therein 40 days, *Rex v. St. George's, Hanover Square*, ii. pl. 130.
2. So a person who rents a furnished apartment at 4s. a week, and the landlord to find firing on particular occasions, gains a settlement by residing therein, *Rex v. Whitechapel*, ii. pl. 132.
3. For the taking of a tenement need not for

- this purpose be a taking for a year, *Gratwich v. Shenston*, ii. pl. 214.
4. And therefore if a person agree to pay twenty-six guineas for a part of a farm from the first of June to the Lady-day following, and enter upon it accordingly, this taking is sufficient to gain a settlement, *Staunton v. Ulescroft*, ii. pl. 215.
 5. A servant to a lodger may gain a settlement by hiring and service, *Rex v. St. Peter's in Oxford*, ii. pl. 391.

LONDON.

1. By 43 Eliz. "every alderman of London within his ward, may do and execute in every respect, so much as is appointed and allowed by this act to be done and executed by one or two justices."
2. An alderman of London is not liable to serve parish offices, *Rex v. Abdy*, i. pl. 10.
3. Physicians, members of the college, exempted from parochial and ward duties in London.

LUNATIC.

See IDIOT.

For the provisions respecting the care and maintenance of lunatics, being paupers or criminals, see stats. 48 G. 3. c. 96. 51 G. 3. c. 79. 55 G. 3. c. 46. 59 G. 3. c. 127. 5 G. 4. c. 71.

M.

MACHINE.

See ENGINE—POOR'S RATE.

MAINTENANCE OF RELATIONS.

- I. *The Statutes.*
- II. *Jurisdiction of Sessions.*
- III. *Form of the Order.*
- IV. *Who are chargeable.*
- V. *Penalty.*
- VI. *Deserted Families.*

I.

Of the Statutes.

1. By 43 Eliz. c. 2. § 7. "the father and grandfather, and the mother and grandmother of every poor, old, blind, lame, and impotent person, or other person not able to work, being of sufficient ability, shall, at their own charges, relieve and maintain every such poor person at the rate the justices in sessions shall assess, on pain of 20s. a month."
2. By 43 Eliz. c. 2. § 11. "the penalties levied

for disobeying any such order of maintenance shall go to the relief of the poor."

5. By 11 & 12 W. 3. c. 4. § 7. "if any *popish parent*, for the purpose of compelling a *protestant child* to change its religion, shall refuse to allow it a fitting maintenance, the court of chancery may make such order therein as is agreeable to the intention of the statute."
4. By 1 Ann. c. 30. "if any *Jewish parent*, in order to compel a *protestant child* to change its religion, shall refuse to allow such child a fitting maintenance, the court of chancery may make such order therein as shall be thought right."
5. By 32 G. 3. c. 45. "persons who do not apply a proper portion of their earnings towards the maintenance of their wives and families, so that they become chargeable, shall be deemed idle and disorderly persons."
6. Justices in petty sessions empowered to order relief by parents, &c., as justices in quarter-sessions by 43 Eliz. c. 2.
59 G. 3. c. 12. § 26.

II.

The Jurisdiction of the Sessions.

7. The justices of the district in which the party on whom the order of maintenance was made dwells, alone have jurisdiction, *Rex v. Reeve*, i. pl. 421.
8. They cannot delegate this authority, but must set the rate of maintenance themselves, *Rex v. Humphries*, i. pl. 422.
9. The justices cannot remove poor persons from their own parish to that where the relations live, who are to maintain them, *Shermanbury v. Bolney*, i. pl. 423.
10. But a rate ought to be made on the person liable to maintain, at so much a week, *Rex v. Jones*, i. pl. 425.
11. And this jurisdiction must be exercised at a *quarter sessions*, and be so stated to have been in the order; for an order stating that it was made at a *general sessions* is bad, *Rex v. Charnock*, i. pl. 424.
12. Although the jurisdiction of the sessions is *original*, yet the order may be made on the application of parish officers, as well as on the application of the poor relation, *Rex v. Kempson*, i. pl. 426.

III.

The Form of the Order.

13. The person in whose favour the order is made must be adjudged poor, unable to work, impotent, or likely to become chargeable, *Rex v. Mendes de Breta*, i. pl. 427.
14. And there must be an express adjudica-

tion in the order, that the pauper is likely to become chargeable, *Rex v. Tripping*,

i. pl. 430.

15. So also the order must adjudicate that the pauper is lame, blind, or unable to work; for if the adjudication be only, that she is in "a destitute condition," *non constat* but that her destitute condition might arise from her refusal to work, *Rex v. Gully*,

i. pl. 431.

16. And it is not sufficient to state in the complaining part of the order, that the pauper was "deserted and impotent," but there must be an express adjudication that she was impotent, *Rex v. Lilton*,

i. pl. 432.

17. And the order may be made "to pay till the court shall direct the contrary," *Jenkins's case*,

i. pl. 438.

18. But it must state that the person on whom it is made, is a person of sufficient ability, *Rex v. Hatifur*,

i. pl. 429.

19. And that must be expressed in positive terms, and not by way of recommendation, *Rex v. Pennoyr*,

i. pl. 453.

20. So also it must shew that the person on whom it is made, is within the jurisdiction of the court, *Rex v. Woodford*,

i. pl. 454.

21. An order made on a *feme covert* is bad, *Cutodies v. Julies*,

i. pl. 438.

22. On an order of maintenance directing the party to pay so much weekly, the money is due and payable at the commencement of every week, *Rex v. Fearneley*,

i. pl. 471.

IV.

Who are chargeable.

23. Bastards are not within the 43 Eliz. c. 2. *Budwath v. Dumpley*,

i. pl. 441.

24. Nor is a husband with respect to the maintenance of his wife; for in this case the justices have no jurisdiction, unless the husband runs away and deserts his wife, and then they have jurisdiction under a different statute, *Rex v. Davison*,

i. pl. 442.

25. If an order be made on a grandmother to maintain her grandchild, and she afterwards marries, her husband is liable to the order, *Draper v. Glenfield*,

i. pl. 435.

26. Provided such husband had an estate in marriage with the grandmother, but not otherwise, *Westminster v. Gerrard*,

i. pl. 436.

27. But by the death of the wife the husband is discharged, *Gerrard's case*,

i. pl. 437.

28. *Sed quæ*. For, by Holt C. J., although the relationship is determined by the death of the wife, yet by an equitable construction of the statute, the husband shall continue to be considered as the grandfather of the

poor person, *Rex v. Barry*, i. pl. 436 n.

29. But it has been since determined, that the statute extends only to *natural relations*, and not to *relations in law*, *Rex v. Kempson*,

i. pl. 450.

30. Therefore if the person on whom the order is made be a grandfather, and give a bond to indemnify the parish as to his son and his family, the condition of the bond is broken if either his son or any of his family become chargeable, *Waltham v. Sparke*,

i. pl. 439.

31. If the father be living, and unable to maintain his child, an order may be made on the grandfather, *Rex v. Joyce*,

i. pl. 445.

32. While this statute was construed to extend to relations in law, it was held that the husband was liable to maintain his wife's children by a former marriage, *Rex v. St. Botolph Aldgate*,

i. pl. 444.

33. But even then it was held that this liability only continued during the lifetime of his wife, *Rex v. Clentham*,

i. pl. 443.

34. But now it is settled, that the statute only extends to provide for *natural relations*, *Rex v. Munden*,

i. pl. 447.

35. Therefore an order made on a father for the maintenance of his son's wife, is bad, *Rex v. Kempson*,

i. pl. 450.

36. For a man is not bound to maintain his son's wife, *Rex v. Dunn*,

i. pl. 446.

37. Nor a son-in-law to maintain his mother-in-law, *Rex v. Munden*,

i. pl. 447.

38. Nor a husband to maintain his wife's mother, *Rex v. Munday*,

i. pl. 448.

39. Nor his wife's daughter, *Rex v. Bennoire*,

i. pl. 449.

40. Therefore of course a husband is not bound to maintain his wife's child by a former husband, *Tulb v. Harrison*,

i. pl. 452.

41. For the words in the statute "*father and mother*," mean such relations as are so in blood; and even those relations are only liable if they are of sufficient ability at the time when the demand arises, *Woodford v. Lilburn*,

i. pl. 451.

42. Though a husband is not bound to provide for the children of his wife by a former husband, yet if he takes them into his house, and they become part of his family, he shall be deemed to stand *loco parentis*, and be liable in a contract made by the wife for their education, *Stone v. Carr*,

i. pl. 454.

43. One who marries a widow having children by her former husband, is not bound to maintain such children, though they were maintained by the widow before her second marriage, when her second

- husband acquired her former means; therefore, if the second husband maintain such children, it is a good consideration for a promise by them when they come of age, to repay the expence of their maintenance respectively; especially where the second husband is a man of small substance, and the children have a competent provision to receive when they come of age, which is to accumulate for them in the mean time, and he make no application to chancery for an allowance out of the fund, *Cooper v. Martin*, i. pl. 455.
44. On the other hand, although a husband be not bound to provide for the children of his wife by a former husband; yet if he takes them into his house, and they become part of his family, he shall be deemed to stand in *loco parentis*, and be liable to a contract made by his wife for their education, *Stone v. Carr*, i. pl. 454.
45. A Jew is not liable to maintain his daughter under the 43 Eliz. c. 2.; and therefore where an order was made for a Jew to maintain an only daughter, whom he had turned out of doors for embracing Christianity, the order was quashed, *Rex v. Mendes de Breta*, i. pl. 440.
46. But now by 1 Ann. c. 30. "if any Jewish parent, in order to compel his protestant child to change his or her religion, refuse to allow such child a fitting maintenance, the court of chancery is authorized to make such order therein, as shall be fit."
47. The same is also enacted by 11 & 12 W. 5. c. 4. § 7. respecting the protestant children of popish parents.

V.

Penalty of Disobedience.

48. Disobedience to an order of maintenance is indictable, *Rex v. Robinson*, i. pl. 456.
49. And by 43 Eliz. c. 2. § 11. "the forfeiture of 20s. a month may be levied by distress, or, in defect thereof, the defaulter may be committed to the common gaol until the forfeitures are paid."

VI.

Of deserted Families.

50. By 7 Jac. 1. c. 4. "persons who run away out of their parishes, and leave their families upon the parish, shall be deemed incorrigible rogues; — and if any person able to work shall threaten to run away and leave his family as aforesaid, the same being proved by two witnesses before two justices, the person so threatening shall be sent by the said justices to the house of correction as a sturdy and wandering rogue, unless he or

she shall give sufficient surety to discharge the parish."

51. But by 17 G. 2. c. 5. "the first sort shall be deemed rogues and vagabonds, and the second idle and disorderly."
52. By 5 G. 1. c. 8. "the overseers may by warrant from two justices seize the offender's goods, and by an order of sessions may dispose thereof."
53. But the order of two justices must state how much of the goods or rents of the fugitive should be seized by the parish officers, and the subsequent order of confirmation by the sessions should specify the quantum of relief to be appropriated out of the goods and rents so seized, and limit a period for such appropriation: *See quere*, Whether such prospective order be good? *Stable v. Dixon*, i. pl. 457.
54. By 17 G. 2. c. 5. "on a second offence, they shall be deemed incorrigible rogues."
55. By 17 G. 2. c. 5. "such offenders may be committed."
56. By 17 G. 2. c. 5. "the sessions may send the offenders to serve in the army or navy."
57. By 17 G. 2. c. 5. "if any incorrigible rogue shall escape from the house of correction, he shall be transported for seven years."
58. A common soldier billeted in a different parish from that in which his family resides, is not a deserter of his family, although he is able and refuse to maintain them, and they become chargeable to the parish, *The Soldier's case*, i. pl. 456.
59. But by 32 G. 3. c. 45. "if any poor person shall not use proper means to get employment, or shall neglect his work, or shall spend his money idly or improperly, and not apply a proper proportion of his earnings towards the maintenance of his wife and family, by which default or neglect they or any of them become chargeable to their parish, he shall be considered idle and disorderly, and be punished as 17 G. 2. c. 5. directs."
- See BASTARDS—RELIEVING POOR—
VAGRANTS.
- MANDAMUS.
1. In what cases the court will grant a mandamus for the appointment of overseers, i. pl. 34. *et seq.*
2. In what cases a mandamus lies to make a poor's rate, i. pl. 80. *et seq.*
3. The court will grant a mandamus to justices to allow a poor's rate, *Rex v. Barnstaple*, i. pl. 85.
4. And if they do not obey the writ, an attachment will issue against them, *Rex v. Edwards*, i. pl. 87.

5. But a *mandamus* will not lie to overseers to make an equal rate, *Rex v. Barnstaple*, i. pl. 86.
6. Because the justices in sessions are the proper judges of the proportion and equality of the poor's rate, and the court will not presume that they will act unjustly, *Rex v. Weobley*, i. pl. 124.
7. Formerly the court of king's bench would grant a *mandamus* to justices, to sign a warrant of distress to levy a poor's rate, *Rex v. Justices of Middlesex*, i. pl. 262.
8. But now they will only grant a *mandamus* to receive information of such persons as have not paid the rate, &c., *Rex v. Benn*, i. pl. 269.
9. For the granting a warrant of distress is a judicial and not merely a ministerial act, *Harper v. Carr*, i. pl. 271.
10. And therefore if it appear that the party has been previously summoned and heard, they will not grant the writ, *Rex v. Benn*, i. pl. 269.
11. Even the personal representatives of the defaulter must be summoned, before a warrant of distress issues, *Stevens v. Evans*, i. pl. 265.
12. A *mandamus* will lie against the preceding overseers, to compel them to deliver their books and papers to their successors, *Rex v. Bletshow*, i. pl. 315.
13. For the books of the overseers are public books, and ought to be delivered over from one overseer to another, that all the parishioners may have access to them in the hands of the overseer for the time being, *Rex v. Clapham*, i. pl. 318.
14. A *mandamus* to swear an overseer to his accounts, according to the 17 G. 2. c. 38. is of course, *Rex v. Justices of Middlesex*, i. pl. 317.

MANUFACTORIES.

See POOR'S RATE — STOCK IN TRADE.

MINERAL SPRING.

A person renting a quantity of land, together with a mineral spring thereout arising, at a gross yearly rent, is rateable to the poor in respect of the whole of such rent, *Rex v. Miller*, i. pl. 174.

MARRIAGE.

1. The mere circumstance of marriage is not, of itself, sufficient to create an emancipation, *Rex v. Cold Ashton*, ii. pl. 61.
2. For if the party, though married, still continue a part of his father's family, and has not contracted a relation inconsistent with that subordinate situation, the mere fact of marriage is only one circumstance, among others, from which the fact of emancipation is to be collected, *Rex v. Wilton cum Twambrookes*, ii. pl. 69.
3. By 26 G. 2. c. 33. "all banns of matrimony shall be published in the parish church wherein the persons to be married shall dwell, upon three *Sundays* preceding the marriage, during divine service, immediately after the second lesson."
4. By 26 G. 2. c. 33. § 1. "if the persons to be married shall dwell in different parishes, the banns shall be published in like manner in the parish church wherein each of the persons shall dwell."
5. By 26 G. 2. c. 33. § 1. "if both or either of the persons shall dwell in any extra-parochial place, having no church or chapel wherein banns have been usually published, the banns shall be published in the parish church of the parish adjoining to such extra-parochial place; in which case the minister shall certify the publication thereof, in the same manner as if either of the parties had dwelt in such adjoining parish."
6. By 26 G. 2. c. 33. § 2. "banns shall not be published unless the persons to be married shall, seven days before the first publication, deliver to the minister a notice in writing of their names and places of abode, and the length of time they have respectively dwelt in the parish."
7. By 26 G. 2. c. 33. § 3. "no minister shall be censured in the ecclesiastical court for marrying persons, both or one of whom shall be under age, without consent of parents or guardians, unless he shall have notice of the dissent of such parent or guardians, by an open declaration in the church at the time of publishing the banns, in which case such publication of banns shall be absolutely void."
8. By 26 G. 2. c. 33. § 4. "no licence shall be granted to solemnize any marriage, in any other than in the church or chapel of the parish, within which one of the persons to be married shall have been for the space of four weeks, immediately before the granting of such licence; or, when both or either of the parties shall dwell in any extra-parochial place, then in the parish church adjoining."
9. By 26 G. 2. c. 33. § 5. "all places where there is no church or chapel shall be deemed extra-parochial."
10. By 26 G. 2. c. 33. § 6. "nothing in this act shall affect the right of the archbishop of Canterbury to grant special licences."
11. By 26 G. 2. c. 33. § 7. "no person shall grant a licence before he has taken an oath to execute his office according to law, and

- hath given a bond to perform it faithfully."
12. By 26 G. 2. c. 33. § 8. "persons solemnizing matrimony in any other place than a church or chapel where banns have been usually published, unless by *special licence*, or shall solemnize matrimony without banns until licence be first obtained, shall be guilty of felony, and transported for fourteen years; but prosecution must be within three years."
13. By 26 G. 2. c. 33. § 8. "all marriages solemnized in any other than such church or chapel, unless by special licence, or without banns or licence, shall be void."
14. But by 26 G. 2. c. 33. § 9. "all prosecutions for such felony must be commenced within *three* years after the offence."
15. By 26 G. 2. c. 33. § 10. "after marriage by *banns*, no evidence shall be received to prove the actual dwelling of the parties in the parish in which the banns were published; or, after marriage by *licence*, to prove the abode of one of the parties in the parish for four weeks previous to its being solemnized."
16. By 26 G. 2. c. 33. § 11. "all marriages solemnized by *licence*, where either of the parties, not being a widow or a widower, shall be under age, which shall be had without consent of the *father*; or the *guardian*, if the father be dead; or of the *mother*, if no father or guardians, are absolutely void."
17. By 26 G. 2. c. 33. § 12. "but if such guardian or mother be *non compos*, or abroad, or shall refuse consent, the parties may apply by petition to the court of chancery."
18. By 26 G. 2. c. 33. § 13. "no suit shall be brought in the ecclesiastical court to compel a marriage, by reason of any contract of matrimony."
19. By 26 G. 2. c. 33. § 14. "the churchwardens of every parish shall provide books of vellum, or of durable paper, in which all marriages and banns of marriage respectively there published or solemnized shall be registered and signed by the minister, or by some other person by his direction."
20. By 26 G. 2. c. 33. § 15. "all marriages shall be solemnized in the presence of two witnesses besides the minister, and immediately after the celebration of every marriage, an entry thereof shall be made in the register according to the directions, and in the form prescribed by the act."
21. By 26 G. 2. c. 33. § 16. "persons convicted of making a false entry in the said register, or of forging, &c. any such entry, or any licence, or destroying, with an ill intent, such register, shall suffer death."
22. By 26 G. 2. c. 33. § 17. "this act shall not extend to the marriages of any of the royal family."
23. By 26 G. 2. c. 33. § 18. "this act shall not extend to *Scotland*, or to *Quakers*, or to *Jews*, or to marriages solemnized *beyond the seas*."
24. Therefore a marriage in *Scotland* between *English* subjects under age is good, *Crompton v. Bearcroft*, ii. pl. 95.
25. All marriages which had been celebrated since the commencement of the act, in chapels not having chapelries or districts annexed to them, in which banns had not been usually published at the time the act commenced, were void, *Rex v. Northfeld*, Doug. 659. 661. *Cald.* 115.
26. But by 21 G. 3. c. 53. "such marriages are rendered good and valid."
27. And by 21 G. 3. c. 53. § 3. & 4., "registers of such marriages are to be received in evidence, and to be removed into the parish church."
28. A marriage, though procured by bribery, will gain a settlement, *Rex v. Watson*, ii. pl. 87.
29. But if the marriage be procured by the overseers of the parish, by such unlawful means, the court of king's bench will grant an information against them, *Rex v. Tarant*, ii. pl. 93.
30. The fact of marriage cannot be enquired into after an order of removal, stating the parties to be husband and wife, if such order be not appealed against at the next sessions, *Rex v. Berkswell*, ii. pl. 85.
31. But the legality of the marriage may be controverted by the appellant parish on an appeal, *Rex v. Enborn*, ii. pl. 92.
32. But if a *man* and *woman* be certificated as *husband* and *wife*, the legality of their marriage cannot be controverted by the certifying parish; for the certificate is, as against that parish, a sort of adjudication that they are man and wife, *Rex v. Headcorn*, ii. pl. 88.
33. A marriage contracted previous to the marriage act, 25th March 1754, if the ceremony was not performed by a priest in holy orders, and *in facie ecclesie*, is null and void, and therefore the woman cannot claim the man's settlement under it, *Rex v. Luffington*, ii. pl. 86.
34. So the marriage of an infant without the consent of parents is void by the marriage act; and therefore neither the woman nor her children gain the settlement of the man with whom she was so connected, *Rex v. Preston*, ii. pl. 89.
35. The validity of a marriage by banns is

- not affected, as to the purposes of settlement, by the entry in the parish register not being signed by the minister or some other person, as directed by the 26 G. 2. c. 33. § 14. *Rex v. Deereux*, ii. pl. 90.
36. Cohabitation as man and wife for 30 years is such presumptive proof of marriage, as will insure the childrep of the parties to the settlement of their parents under it, *Rex v. Stockland*, ii. pl. 91.
37. The proof of a marriage in fact is not necessary for the purpose of gaining a settlement; but proof by cohabitation, reputation, and other circumstances from which a marriage may be inferred, is sufficient, *Morris v. Miller*, ii. pl. 94.
38. A person whose baptismal and surname was A. L. was married by banns by the name of G. S., having been known in the parish where he resided, and was married by that name, only from his first coming into the parish till his marriage, which was about three years; Held, that the marriage was valid, and, therefore, the wife and children entitled to the husband's settlement, *Rex v. Billingshurst*, ii. pl. 100.
39. A marriage by licence not in the man's real name, but in the name which he had assumed, because he had deserted, he being known by that name only in the place where he was lodged and was married, and where he had resided 16 weeks, was held a valid marriage, *Rex v. Burton-upon-Trent*, ii. pl. 101.
40. On the removal of a woman to her supposed husband's settlement, the illegality of marriage may be proved by the man himself, or by his real wife, *Henley v. Chekham*, ii. pl. 96.
41. The marriage of a female bastard with the consent of her putative father, is sufficient to gain a settlement, although she was under age at the time of the marriage, *Rex v. Edmonton*, ii. pl. 97.
42. Therefore a marriage between two infants, solemnized by means of a procured licence, and without the consent of either parents or guardians, is not sufficient to gain a settlement, although both the parties are illegitimate; for such marriage is void by the 26 G. 2. c. 33. *Rex v. Hodnett*, ii. pl. 98.
43. *See quære*: Whether the marriage of an illegitimate child by licence with the consent of her mother, after the death of her putative father, without appointing any guardian to the child, be valid or void within the marriage act? ii. pl. 97 n.
44. For the manner in which settlements are gained by marriage, *See SETTLEMENT BY MARRIAGE*, iv. Chap. iii. Vol. II.
45. If a married man agree conditionally to become the servant of another, and be-

- tween the time of the agreement and the performance of the condition his wife dies, he is not precluded from a settlement under such hiring and service, by the 3 Will. & Mary, c. 11. § 6. *Rex v. Bank Newton*, ii. pl. 259.
46. So, although it was not known to the party at the time of hiring, that the marriage is dissolved by the death of the husband or the wife, *Rex v. Hensingham*, ii. pl. 260.
47. Marriage after the hiring, and before the service commences, will not prevent a settlement, *Rex v. Allendale*, ii. pl. 281.
48. Nor marriage after hiring and during service, *Farringdon v. Witty*, ii. pl. 416.
49. For the service is not dissolved by the marriage, *Rex v. Clent*, ii. pl. 417.
50. And all that the law requires is, that the servant shall not be married at the time he is hired, *Rex v. Sutton*, ii. pl. 418.
51. If a servant marry during service, and reside with his wife in a different parish, he shall gain a settlement where he resides the last day, if he has resided 40 days in the same place under the hiring, *Rex v. Great Bookham*, ii. pl. 407 n.
52. Same point, *Rex v. Castleton*, ii. pl. 418.

MASTER.

See APPRENTICE, — HIRING AND SERVICE, — SERVANT.

MILITIA-MEN AND SOLDIERS.

1. An officer on half pay ought not to be appointed an overseer of the parish in which he resides, unless there are no other parishioners more eligible to the office, *Rex v. Gayer*, i. pl. 14.
2. By 26 G. 2. c. 107. § 180. "no serjeant, corporal, or drummer of the militia, nor any private, from his inrollment to his discharge, shall be compelled to serve as a peace or as a parish officer."
3. But no provision is made in this respect for the officers of the militia.
4. Stables rented by the colonel of a regiment, by order of the crown, for the use of soldiers, are not rateable to the poor, *Lord Amherst v. Lord Somers*, i. pl. 188.
5. But the owner of stables rented by the colonel of a troop of horse, by the authority of the king, for the use of the troops, is liable to be assessed for such stables to rates, under an act of parliament for paving and repairing the streets of the parish in which they are situated, *Eckersall v. Briggs*, i. pl. 195.
6. The master-gunner of a battery-house, the property of the crown, and from which he is liable to be removed at the king's

- pleasure, is rateable to the poor, if the sessions find that he is the *occupier* of the battery-house; for that fact fixes his liability to be rated, *Rex v. Hurdin*, i. pl. 191.
7. The pay of officers in the army or navy is not rateable to the poor, *Rex v. White*, i. pl. 192.
8. If a son enlist himself as a *soldier*, he thereby *emancipates* himself from his father's family, *Rex v. Walpole St. Peter's*, ii. pl. 62.
9. A *common soldier* billeted in a different parish from that in which his family resides, is not a vagrant within the statutes 7 Jac. 1. c. 4. § 8., and 17 G. 2. c. 5. § 1., as a person who has run away, or threatened to run away and leave his family, although his family become chargeable to the parish, and he is able to maintain them, *The Soldier's case*, i. pl. 456.
10. The deputy lieutenants ought to make every enquiry before they approve of a substitute; and if he have more than one child he ought to be rejected; but if the deputy lieutenants do take him, he then becomes a legal substitute, and the parish for which the principal serves, must bear the expence of maintaining the family of the substitute, *Rex v. Willis*, i. pl. 480.
11. And the family of a substitute in service shall be relieved, although he was neither approved of nor enrolled, *Rex v. Ledbury*, i. pl. 481.
12. By 43 G. 3. c. 47. § 2. the families of non-commissioned officers, drummers, or private militia-men in ENGLAND, called out into *actual service*, shall receive a weekly allowance out of the poor's rate.
13. By 43 G. 3. c. 47. § 3. the justices at any *Michaelmas quarter sessions* may regulate the rate of allowance.
14. By 43 G. 3. c. 47. § 4. no allowance shall be made to the wife or family of any person till he shall have joined his corps, nor longer than he shall remain in actual service; or to any wife who shall follow the corps, or leave her child, or depart from her home, unless under certificate for obtaining work, &c.
15. By 43 G. 3. c. 47. § 5. no allowance shall be made to the family of any substitute, hired man, or volunteer, who shall have falsely declared that he had no wife or family, or that he had only one child, having more, but upon certain conditions.
16. By 43 G. 3. c. 47. § 6. nor to the family of any non-commissioned officer or drummer reduced to a private man for misconduct.
17. By 43 G. 3. c. 47. § 7. nor to the family of any substitute, hired man, or volunteer, who shall marry after being called out into actual service, without the consent of the commanding officer.
18. By 43 G. 3. c. 47. § 8. families not to be sent to any workhouse for receiving such allowances; nor the persons to whose families such allowance is paid, deprived of their legal settlements or right of voting for members.
19. By 43 G. 3. c. 47. § 9. the allowance given to non-commissioned officers and drummers, shall be repaid to the overseers of the poor by the county treasurer.
20. By 43 G. 3. c. 47. § 10. the relief to families of non-commissioned officers and drummers, shall be apportioned between counties at large, and places not contributing to the county rates, according to the number of men raised for each.
21. By 43 G. 3. c. 47. § 11. treasurers to demand and pay such proportions to one another.
22. By 43 G. 3. c. 47. § 12. disputes as to proportions to be settled by the lord lieutenant, or three deputy lieutenants.
23. By 43 G. 3. c. 47. § 15. in places not contributing to the county rate, where no treasurer is appointed, the justices in quarter sessions shall appoint one, and make assessments, &c.
24. By 43 G. 3. c. 47. § 14. where no allowance is made to the family of a militia-man, in any other place than that for which he shall serve, the justice making the order of relief, may direct the overseers of the place for which he is serving to reimburse the money.
25. By 43 G. 3. c. 47. § 15. where such reimbursement cannot be conveniently procured from the overseers, repayment may be demanded from the treasurer, or the place where the allowances were paid.
26. By 43 G. 3. c. 47. § 16. treasurers reimbursing such allowances shall transmit an account, signed by a justice, to the treasurer of the place for which the man shall serve, who shall repay the same.
27. By 43 G. 3. c. 47. § 17. the treasurer repaying such allowances to another treasurer, shall transmit the signed account to the justices at the next quarter sessions, who shall order the same to be repaid out of the poor rates.
28. By 43 G. 3. c. 47. § 21. accounts of allowances to be reimbursed under this act shall be made up, signed by the justices, and demanded of the overseer, &c. within certain periods.
29. By 43 G. 3. c. 47. § 22. where more than a wife and three children shall become chargeable, the overseer of the poor may provide another man to serve in room of the father, whose pay shall commence

from the discharge of the man in whose room he is provided, &c.

30. By 45 G.3. c. 47. § 28. payments made by overseers under this act, shall be allowed as other expences on account of the militia; and if any overseer shall not pay money ordered by a justice, he shall forfeit $\text{£}4$, which may be recovered by distress.— Application of penalty.

31. By 45 G.3. c. 47. § 24. this act shall extend to all places having separate overseers, and to places united for the purpose of balloting for men, &c.—Justices shall ascertain what proportions shall be contributed by united places, or by places comprising more than one, which shall have separate overseers, for the relief granted to the families of men serving for such places.

32. By 45 G.3. c. 47. § 25. the adjutant, or, where none, the serjeant-major, shall make monthly returns to the clerks of the subdivision meetings of certain particulars, who shall transmit extracts to the overseers of the poor.

33. By 45 G.3. c. 47. § 26. appeal may be made to the quarter sessions.

34. By 45 G.3. c. 47. § 27. quarter sessions may order recompense to the treasurers out of the county stock.

35. It has been determined that in an indictment on a similar clause to the above, in the statute 19 G.5. c. 72. now repealed, the order of maintenance must be stated or alluded to; and that the order of reimbursement must be made at the same time with the order of maintenance, directing that whatever shall be paid under the one shall be repaid under the other, *Rez v. White and Ealing*, i. pl. 479.

36. But see *Rez v. Milton*, i. pl. 479 n.

37. A substitute in the militia fraudulently and falsely declaring at the time that he had no wife or family, when in fact he had a wife and one child, is not entitled to any parochial allowance for their relief, under the statute 45 G.3. c. 47. §§ 2. & 5. *Rez v. Preston*, i. pl. 482.

38. A soldier is not protected by the mutiny act against a commitment for disobeying an order of bastardy, *Rez v. Archer*, i. pl. 533.

See also *Rez v. Bowen*, i. pl. 534.

39. The order of reimbursement must be made not only at the same time, but by the same magistrate as made the first order of maintenance, and notice of such order must be served on the parish, *Rez v. Ledbury*, i. pl. 481.

40. By 5 G.3. c. 8. § 1. "all officers, mariners, soldiers, and marines in the king's service, and also the wives and children of such

officers, mariners, soldiers, and marines, may set up and exercise such trades as they are apt and able for, in any town or place in *Great Britain* or *Ireland*, notwithstanding the restraints of 5 Eliz. c. 4."

41. By 22 G.3. c. 44. "soldiers and mariners who have served the king, and shall exercise any trade in any town or place, shall not be removed therefrom, until actually chargeable."

42. By 24 G.3. c. 6. "officers, mariners, soldiers, and marines, who have been employed in the king's service since 1 April 1763, and have not since deserted, and also the wives and children of such officers, mariners, soldiers, and marines, are authorized to set up and exercise any trades in *Great Britain*, and shall not be removed from thence to the place of their last legal settlement, until they become actually chargeable to the parish; and if sued, they may plead the general issue, and on acquittal, shall have double costs."

43. By 24 G.3. c. 6. § 2. "if any two justices for the county or place where such officers, mariners, soldiers, and marines shall set up, shall summon them to give evidence of the place of their last legal settlement, they shall make oath accordingly, an attested copy of which shall be given to them, which attested copy shall be evidence."

44. By 24 G.3. c. 6. § 3. "and in case such officer, mariner, soldier, or marine shall again be summoned to make oath as aforesaid, he shall produce such attested copy, which shall be sufficient evidence of the place of his settlement."

45. By 47 G.3. (annual mutiny act) "two justices, where any married soldier shall be quartered, may summon him to make oath of the place in which he and his family are settled, and the justices shall give to him an attested copy of his affidavit, to deliver to his commanding officer; which attested copy shall be at any time admitted in evidence as to such last legal settlement, before any justice or session; and if summoned again, for the same purpose, he shall not, on producing his first examination, be compelled to answer as to his place of settlement a second time."

46. The deposition of a soldier taken under the mutiny act, respecting the place of settlement, and corroborated by his wife in her examination before the sessions, are sufficient proof of his settlement by apprenticeship, *Rez v. St. Michael's Bath*, ii. pl. 601.

47. No other attested copy of the examination under the mutiny act than that given

parishes within the same, cannot reap the benefit of the 43 Eliz. c. 2., two or more overseers shall be yearly chosen and appointed, according to the directions of the 43 Eliz. c. 2. within every township or village within such county."

5. By 17 G. 2. c. 38. § 3. "if any overseer so appointed shall die, or remove from the place, or become insolvent, before the expiration of his office, two justices, on oath made thereof, may appoint another in his stead until new overseers are appointed."

4. By 43 Eliz. c. 2. § 8. "the mayor and magistrates of every city, being justices of the peace, and every alderman in his ward, shall have the same authority within their respective jurisdictions as is given to two or more justices of the peace."

5. By 43 Eliz. c. 2. § 9. "if any parish happen to extend into more counties than one, or part to lie within a city and part without, the magistrates of the city and justices of the county shall only intermeddle in so much of the parish as lies within their several jurisdictions respectively; but the churchwardens and overseers of such parish shall, nevertheless, duly execute their office, without dividing themselves, in all places within the said parish."

6. By 43 Eliz. c. 2. § 10. "the magistrates and justices of such division, where there shall happen any default of nominating overseers as is before appointed, shall forfeit 5*l*."

7. Appointment of overseers of the poor shall in every year be made on the 25th day of March, or within 14 days next after the said 25th day of March. 54 G. 3. c. 91.

8. Separation of towns from parishes, and distinct appointment of overseers, declared to be lawful. 59 G. 3. c. 95. § 1.

9. But with respect to the maintenance of the poor or appointment of overseers, such separation must have commenced more than 60 years before 12th July 1819. 59 G. 3. c. 95. § 1.

II.

Of the Appointment.

10. As the statute directs the appointment to be under the hands and seals of two justices, no parol evidence can be given of it, *Rex v. Arnold*, i. pl. 20.

11. The order by which overseers are appointed need not state that they are joined with the churchwardens in the office, *Rex v. Searle*, i. pl. 1.

12. The persons appointed under the above statutes must be expressly appointed *co*

nomine overseers, in the order made by the two justices, *Rex v. St. George's*, i. pl. 2.

13. The order also must state that they are *substantial householders*; for an order describing them as *principal inhabitants* is bad, *Rex v. Sheringbrooke*, i. pl. 3.

14. It must also state the county in which the parish is situated, *Rex v. Honditch*, i. pl. 4.

15. So also the order must state that they are substantial householders in the parish, *Rex v. Weobly*, i. pl. 5.

16. And the place also for which overseers are appointed, must be expressly called in the order a parish; for where an appointment was made of overseers "for the precinct of the Tower, otherwise called the parish of St. Peter's," it was held bad, *Rex v. Severn*, i. pl. 6.

17. But an order appointing four overseers of the hamlet of B. in the parish of C. is good; for it shall be intended that the place B. is a vill, unless it be stated to be otherwise, *Rex v. Morris*, i. pl. 28.

18. But the order need not state the justices, under whose hands and seals the order is made, to be justices of the division, i. 5. *note*.

19. Nor has it ever been determined that all the overseers of a parish must be appointed by the same order; and therefore an order appointing A., being a substantial householder of the parish of B., to be overseer of the poor for the hamlet of C. in the said parish, is good, *Rex v. Morris*, i. pl. 8.

20. And the words "substantial householders," are to be relatively taken; and therefore an order appointing a poor person is good, if there are no opulent householders in the parish, *Rex v. Stubbs*, i. pl. 7.

21. So also the order ought to appoint "for a year," or "until another shall be appointed;" but the court will intend every thing to support an order of justices; and therefore an appointment of an overseer "for the next year ensuing" will be understood to be for the overseers' year, *Rex v. Burder*, i. pl. 41.

22. So also an appointment made in consequence of a *mandamus*, above a month after Easter, "for the present year," held good, for it means "the overseers' year," *Rex v. Sparrow*, i. pl. 34.

23. So also an appointment of overseers made on the 6th October, for the year next ensuing the date thereof, is good, for although it exceeds the time mentioned in the 43 Eliz., yet it shall be taken to mean only the overseers' year, *Rex v. Stubbs*, i. pl. 40.

24. An indenture of apprenticeship made 1797, having been signed by only one overseer of the appellant parish, the respondent parish, to show that only one had been appointed that year, called upon the appellants to produce the original appointment, (having given them notice to produce all books and writings relative thereto): one book only was produced, and that was not for the year 1797. Held, that the respondents, not having taken any means to procure the testimony of the overseer himself (who must be presumed to have the custody of the original appointment), were not entitled to give secondary evidence of its contents, *Rex v. St. Golding*, i. pl. 78.
25. An appointment by two justices of overseers of the poor, may be removed into this court by *certiorari*, without appealing against it to the quarter sessions, and this court will go into the question upon affidavit, whether the place for which the appointment is made be a township or vill; and if it appear by the affidavits, that it is not, and be not stated to be such, or that it is reputed to be such, the court will quash the appointment, *Rex v. Stand-ard Hill*, i. pl. 75.
26. Where a parish contained within itself a borough not so co-extensive with it; and the mayor of the borough, on a return to a *mandamus* for allowing a poor's rate made by the churchwardens and overseers of the whole parish, stated a custom which had existed since the 43 Eliz. c. 2. of appointing separate churchwardens and overseers, and of making separate rates for the borough, and for those parts of the parish which lay without the borough, it was holden that such custom was invalid, and the return was quashed accordingly. *Rex v. Gordon*, i. pl. 76.

III.

What Persons are liable to be appointed.

27. An ATTORNEY cannot be appointed to a parish office, as churchwarden, even though there is a special custom in the parish for every parishioner to serve the office by rotation; for his privilege of exemption is grounded on his being obliged to attend the courts, and a custom cannot prevail against it, *Rex v. Prowse*, i. pl. 9.
28. A BARRISTER is said to have the like privilege for the same reason, *Id. ibid.*
29. An ALDERMAN of LONDON also being obliged to attend the duties of the corporation, cannot be elected to a parish office, *Rex v. Abdy*, i. pl. 10.
30. A CLERGYMAN, though he has no cure of

- souls, is privileged from being overseer *Anonymous*, i. pl. 12.
31. So *peers of the realm and members of the house of commons* seem exempted, i. 5. *notis.*
32. *Tide-waiters* and other revenue officers are exempted from serving the office of overseer, *Raymond v. St. Botolph Aldgate*, i. pl. 11.
33. An officer of the customs is therefore exempted, although he has not his writ of privilege at the time he is chosen, *Rex v. Warner*, i. pl. 16.
34. OCCASIONAL RESIDENTS in a parish ought not to be chosen overseers, in preference to those who live constantly in the parish, *Rex v. Moor*, i. pl. 13.
35. A, B, and C, carrying on trade in partnership, had a dwelling-house, yard, and premises in a parish in London. All the partners were in the habit of frequenting the premises daily for the purpose of business, but none of them resided there. The dwelling-house was inhabited by a clerk who managed the business for them, but the rent, rates, and taxes were paid by the firm: held that each of the partners was a householder within the 43 Eliz. c. 2., and liable to serve the office of overseer, *Rex v. Poynder*, i. pl. 19.
36. A WOMAN may be appointed overseer of a parish; for the words "substantial householder" have no reference to sex, *Rex v. Stubbs*, i. pl. 15.
37. But the justices do well to refuse nominating a woman, when there are other persons in the parish better able and more suited to serve the office, *Rex v. Chardstock*, i. pl. 15 n.
38. And *qu.* Whether an acting justice of the peace, or a lieutenant of marines on half pay, ought to be appointed, if there are other sufficient and substantial householders within the parish? *Rex v. Gayer*, i. pl. 14.
39. But unless there is a positive exemption, the justices have a discretionary power to appoint such persons in the parish as they think most proper to execute the office, *Id. ibid.*
40. And on appeal, the opinion of the sessions as to the propriety or impropriety of such appointment is conclusive, *Id. ibid.*
41. By the 32 Hen. 8. c. 40. "members of the college of physicians are exempted from serving the office of constable or any other office in London."
42. By 1 Will. & Mary, c. 18. § 11. "dissenting ministers, who shall take the oaths, and subscribe the declaration, as required by the Toleration Act, are exempted from being overseers."

43. A baptist preacher, qualified according to the above statute, is exempted from all parish offices, whether existing before or created since the statute, and although he is also engaged in trade, *Kenward v. Knowles*, i. pl. 18.
44. By 1 Will. & Mary, c. 18. § 7. "if a dis-senter shall be appointed overseer, and shall scruple to take the oaths, he may serve the office by deputy."
45. By 6 & 7 Will. 3. c. 4. "apothecaries who are free of the apothecaries' company, or who have served an apprenticeship to the said art, shall, while they exercise the same, be exempted from serving the office of overseer."
46. By 10 & 11 Will. 3. c. 23. "persons and their assignees apprehending and convicting burglars and shoplifters, are exempted from serving the office within the parish where such felony was committed."
47. A certificate granted by a judge at the assizes, upon the apprehension and conviction of a burglar, exempting the prosecutor and his assignee from "all and all manner of parish and ward offices," exempts the party from serving the office of petty constable for a township within, but not co-extensive with the parish where the felony was committed, and for which the certificate was granted, to which office he was appointed at the court leet of the manor co-extensive with such township, *Moseley v. Stonehouse*, 7 East, 174.
48. By 18 G. 2. c. 15. § 10. "freemen of the company of surgeons, for so long time as they shall exercise the art and science of surgery, and no longer, shall be freed and exempted from serving the office of overseer of the poor."
49. By 42 G. 3. c. 90. § 174. "no sergeant, corporal, drummer, or private man in the militia, shall be compelled to serve as a peace or as a parish officer."

IV.

Who shall appoint Overseers.

50. The overseers must be appointed by two justices; for the sessions have no original jurisdiction upon this subject, and can only quash or confirm the order on appeal, *Rex v. Flag*, i. pl. 21.
51. And when a parish is part within and part without a corporation, the mayor of the corporation and a justice of the county are not two justices within the meaning of the statute, *Rex v. Butler*, i. pl. 22.
52. The appointment must be under the hands and seals of the two justices, *Rex v. Arnold*, i. pl. 20.
53. And they must sign and seal the appoint-

ment in the presence of each other; for the appointment of overseers is a judicial act, in which the justices are to exercise their discretion, by conferring with each other on the subject, *Rex v. Forrest*, i. pl. 25.

54. And both magistrates must be together at the time the appointment is signed, *Rex v. Great Marlow*, i. pl. 24.
55. But it has been held, that an order of removal, signed by two justices separately, and in different counties, is not therefore void, but voidable only by appealing to the sessions, *Rex v. Stotfold*, ii. pl. 788.

V.

Of the Number of Overseers.

56. The 43 Eliz. c. 2. § 1. says, "that four, three, or two substantial householders, shall be appointed overseers, having respect to the proportion and greatness of the parish."
57. And by 13 & 14 Car. 2. c. 12. § 21. "two or more overseers shall be yearly appointed in those townships and villages, which, by reason of the largeness of parishes, could not otherwise have the benefit of the 43 Eliz. c. 2."
58. The justices therefore cannot appoint more than four overseers for one parish or township; for the 43 Eliz. c. 2, beginning with the number four, shows the extent to which the legislature intended they should go, and the words being affirmative, imply a negative that they shall not appoint more, *Rex v. Harman*, i. pl. 25.
59. And therefore an order of justices, appointing five overseers of one parish, is bad, *Rex v. Loxedale*, i. pl. 27.
60. But although in the construction of this act, not more than four, nor less than two overseers are to be appointed, yet as all the overseers need not be appointed *uno flatu*, the court will not quash an order appointing one overseer; for other overseers may have been appointed by other orders, *Rex v. Besland*, i. pl. 26.
61. The four, three, or two overseers therefore may be each of them appointed at different times and by different instruments, *Rex v. Morris*, i. pl. 28.
62. And therefore an order of justices which appointed A., "being a substantial householder of the parish of B., to be overseer of the poor for the hamlet of C. in the said parish," is good, *Id. ibid.*
63. But an appointment of one overseer alone for a township, is bad; for the statute 13 & 14 Car. 2. expressly requires, at least, two overseers, *Rex v. Clifton*, i. pl. 29.

64. Although a parish might not have had the benefit of the statute 43 Eliz. c. 2., before and at the passing of the statute 13 & 14 Car. 2. c. 12., but, perhaps, at that period, and certainly for a long course of years antecedent to the year 1775, maintained its poor in separate districts; yet it was competent to the parishioners at the latter period to cease acting under the statute Car. 2., and to recur to the general provision of the statute 43 Eliz., by maintaining their own poor as one entire parish; and having done so from the year 1775, the court refused a *mandamus* to the justices of peace to appoint separate overseers as before that time, *Rex v. Palmer*, i. pl. 67.
65. A local act directed, that the then overseers of the parish of *W.* should continue to be overseers for the remainder of the current year, and until two others should be appointed, and that two overseers should be appointed annually: held that this act did not repeal the statute 43 Eliz. c. 2. § 1., and that an appointment of two overseers for the parish of *W.* was valid, *Rex v. Pinner*, i. pl. 51.
66. Two divisions within a parish had separate overseers and separate rates, and managed their poor separately; but at the end of every year, in making up their accounts, the overseers of the one (if they had money in hand) paid the balance over to the overseers of the other: held that this was in effect one joint parochial account, and that all the overseers were to be considered as joint overseers of the parish at large, *Malkin v. Vickerstaff*, i. pl. 30.

VI.

As and for what Time to be appointed.

67. The 43 Eliz., directing the appointment to be made in *Easter week*, or within a month after *Easter*, and *Sunday* being the first day of the week, it seems that an appointment made *bonâ fide*, and without fraud, even on a *Sunday*, is good, *Rex v. Clerkswell*, i. pl. 33.
68. And therefore where six appointments were made by two sets of justices, and it appeared that two had been made on *Easter Sunday*, two on the *Monday*, and two more on the *Tuesday*, which last was the usual day for appointing overseers, yet the court said, that if those made on the *Sunday* were *bonâ fide*, it was good, *Rex v. Merchant and Allen*, i. pl. 38.
69. For after the appointment required, is once made by one set of magistrates, the

- jurisdiction of the magistracy upon the subject is at an end: they are *functi officio*, and no other magistrates can afterwards appoint, even if those appointed claim exemption, *Rex v. Great Marlow*, i. pl. 42.
70. But as *Sunday* is an improper day for such business, an appointment made on *Easter Sunday* is, *primâ facie*, clandestine and bad, *Rex v. Butler*, i. pl. 37.
71. Therefore where on a contest between two adverse sets of borough justices, each set met before midnight at *Easter Eve*, and each began making their appointments the instant the clock had struck 12, and so kept on renewing the same appointments for an hour or two, but one set made a fresh appointment at eight o'clock on the *Sunday morning*, the court quashed all the appointments, *Rex v. Bridgewater*, i. pl. 38.
72. But one appointment out of two or more appointments made on the same day, may be good, *Rex v. Searle*, i. pl. 32.
73. When an appointment is made in consequence of a *mandamus*, it is good, although made above a month after *Easter*, *Rex v. Sparrow*, i. pl. 34.
74. So an appointment made on *Easter Wednesday* 1766, for this present year, is good, for it shall be intended for the overseers' year, *Rex v. Helling*, i. pl. 36.
75. So an appointment for a whole year may be good, *Rex v. Jones*, i. pl. 35.
76. So also an appointment of an overseer for the year next ensuing, will be understood to be for the overseers' year, *Rex v. Burder*, i. pl. 41.
77. So also, for the same reason, an appointment made on the 6th October, for one year next ensuing the date thereof, is good, *Rex v. Stubbs*, i. pl. 40.

VII.

Of and for what Place.

78. The 43 Eliz. c. 2. orders overseers to be appointed in *parishes*; and the 13 & 14 Car. 2. in *townships and villages*.
79. These statutes extend to towns and villages in extra-parochial places, as well as in parishes, *Dolting v. Stokelane*, i. pl. 46.
80. But overseers cannot be appointed to any place, that is not either in law or by reputation a *parish*, or a *vill*, *Rex v. Rufford*, i. pl. 47.
- See *Rex v. Showler*, i. pl. 53.
81. Therefore overseers cannot be appointed to a place that is not nor ever was a township or village, or been reputed to be a township or village, *Rex v. Welbeck*, i. pl. 50.
82. As, for instance, the sites and areas of

- ancient cathedrals, colleges, and inns of court, *Rex v. Justices of Peterborough*, i. pl. 59.
83. But separate overseers may be appointed to a *vill* containing divers substantial freeholders able to contribute to the maintenance of the poor, although it is not part of any parish, and has immemorially been without church, chapel, or parochial rights, and never had overseers before, *Rex v. Rufford*, i. pl. 47.
84. So separate overseers may be appointed for an ancient village, used and reputed as a parish before the 43 Eliz. c. 2., although it be parcel of another parish which was an ancient rectory, *Hilton v. Pawle*, i. pl. 43.
85. So separate overseers may be appointed for a reputed vill, although it was originally part of the adjoining parish, *Nicholas v. Walker*, i. pl. 44.
86. But separate overseers cannot be appointed for a *vill* which has performed its parochial rites in the parish, although it had a chapel of its own before the passing the 43 Eliz., and has been separately rated to the poor since that period, *Rudd v. Foster*, i. pl. 45.
87. And the court will not intend the place to be a *vill*; and therefore an appointment of overseers for the *precinct* of the Tower, otherwise called the *parish* of *St. Peter's*, is bad; for although the place is a parish by reputation, it must be so stated, *Rex v. Severn*, i. pl. 52.
See also *Rex v. Tamworth*, i. pl. 56.
88. A *hamlet* and *vill* are synonymous terms, *Rex v. Morris*, i. pl. 65.
89. So an appointment to a place called *Brokenham Lodge*, an extra-parochial place, is bad; for it shall not from this statement be intended a vill, *Dolting v. Stokelane*, i. pl. 46.
90. Nor shall an extra-parochial place, consisting of only two houses, be considered a township or vill, *Rex v. Denham*, i. pl. 48.
91. Nor the demesnes of a nobleman's seat in an extra-parochial place, though converted into five farms, *Rex v. Grafton*, i. pl. 49.
92. Therefore, on an application for a *mandamus* to appoint overseers, stating by affidavit the strongest circumstances to show that the place is a *vill*, yet unless it is not expressly stated to be a vill, or that it has been so reputed, the court will not grant the writ, *Rex v. Bedfordshire*, i. pl. 58.
93. And where the sessions adjudge the place to be a *vill*, the court will take the fact to be as found, and grant a *mandamus*, although there are strong circumstances to show that it is not a vill, *Rex v. Barton Abbey*, i. pl. 62.
94. But a place consisting of only two houses may be a vill, *Id. ibid.*
95. Even though the place be extra-parochial, and consist only of two houses; for the finding of the sessions is decisive of the fact, *Id. ibid.*
96. The justices cannot appoint overseers under the 13 & 14 Car. 2. c. 12. for the separate parts of a parish, unless it appears that the township or village cannot otherwise enjoy the benefits of the 45 Eliz. c. 2., *Rex v. Justices of Middlesex*, i. pl. 61.
Same point, *Pearce v. Westgarth*, i. pl. 64.
Same point, *Rex v. Uttoxeter*, i. pl. 57.
97. And whether or not a parish can have the benefit of the 45 Eliz. c. 2. by maintaining its poor with not more than four overseers, is a fact which the sessions ought to find, and should not leave to be presumed by the court from other conflicting evidence stated in a case reserved; such as that the parish had the benefit of the statute down to 1739, and that from thence to 1753, it was uncertain how the poor were maintained there; and that from 1753 the poor had been maintained separately in six townships, but that the population was decreased, *Rex v. Watson*, i. pl. 66.
98. Where a parish is divided into separate townships which have separate overseers, each township, with respect to its poor, is to be considered as a distinct parish, *Rex v. Kirkby Stephen*, i. pl. 56.
99. Where a parish consists of several townships, some of which maintain their own poor, and have overseers separately appointed, the court will grant a *mandamus* for the separate appointment of overseers for the remaining townships; and where such parish has immemorially had more than four overseers, that is a proof that they cannot have the benefit of the 45 Eliz. c. 2., and intitles each township to have separate overseers, *Rex v. Horton*, i. pl. 61.
100. So where a township has had for sixty or seventy years past, separate overseers and has maintained its own poor separately from the parish at large, it is still intitled to the same privilege, *Rex v. Leigh*, i. pl. 63.
101. But where a parish consists of two separate districts, each of which immemorially made a separate rate, but the money when raised was blended together in one joint fund, though applied in certain proportions, and the sessions did not find as a fact that the parish could not reap the

benefit of the 43 Eliz. c. 2. it was held that the districts were not entitled to maintain their own poor separately and distinctly, although since the year 1648, they had constantly had, in the whole, more than four overseers, and although the hamlet part had immemorially had a constable of its own, *Res v. Newell*, i. pl. 64.

102. But where a parish has distinct officers, and makes distinct rates, and has immemorially made distinct accounts to the justices of the several counties in which the different parts of the parish is situated, each division shall be considered as a separate parish, and have separate overseers, *Fisher's case*, i. pl. 64. n.

105. And, though a parish had at no time antecedent to the year 1773-5, had the benefit of 43 Eliz. c. 2. but had always had five overseers appointed separately, two for one district, two for another, and one for a third, yet two of the districts having agreed in 1773 to act together, to which the third acceded in 1775, and there having been but four overseers since that period who had been appointed for the whole parish; THE COURT held that such an agreement at the time, acted upon for thirty years past, was proper evidence for the jury, to decide that the parish could in fact enjoy the benefit of the statute, and consequently that a distress levied for a poor's rate, made by the overseers conjointly appointed for the whole parish, was legal, *Lane v. Cobham*, 7 East, 1.

106. The two districts of which a parish consisted had, from the 43 Eliz. down to the 13 & 14 Car. 2., maintained their poor jointly, and at the time of the passing of the latter act agreed to separate in the maintenance of their poor, and that separate overseers should be appointed, upon condition that the rateable property in the parish, whether situated in the one or the other district, should be rated where the occupier resided. In consequence of that agreement they had ever since uniformly maintained their own poor separately, and had had separate overseers, constables, &c. Held that this clearly showed that the parish, at the time of the agreement, could not reap the full benefit of the statute of Eliz., and that therefore the separation of the two districts was valid, and that an appointment of overseers for the whole parish was now void. Held also, that the agreement consisted of two distinct parts, and that the validity of the latter part, as to rating property not situated within the district itself, did not affect the question on the former part, *Res v. Walsall*, i. pl. 68.

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105. Whether or not a parish can have the benefit of the stat. 43 Eliz. c. 2. by maintaining its poor with not more than four overseers is a fact which the sessions ought to find and should not leave to be presumed by the court from evidence that the parish had the benefit of the statute to 1759, and from thence to 1753, it was uncertain how the poor were maintained there, and that from the latter period the poor had been maintained separately in the townships; but that the population had decreased, *Res v. Watson*, i. pl. 66.

106. For the time and manner of appealing against an appointment of overseers, see ante, APPEAL.

OVERSEERS' ACCOUNTS.

- I. Of allowing the Accounts.
- II. Of making up and delivering the Account.
- III. Appealing from the Allowance.
- IV. Paying the Balance.

I.

Of allowing the Accounts.

1. By 43 Eliz. c. 2. § 2. "the overseers of every parish shall within four days after the end of their year, and after other overseers are appointed, make and yield up to two justices, true and perfect accounts of their official transactions."
2. And by 43 Eliz. c. 2. § 4. "any two justices may commit any overseer who shall refuse to account, until he shall have made a true account."
3. But by 17 G. 2. c. 38. § 1. "the overseers shall yearly, within fourteen days after other overseers are appointed, deliver in to such succeeding overseers, a just, true, and perfect account, in writing, and signed by them, of all things concerning their office; which account shall be verified by oath before one justice, and which oath the justice is required to administer, to sign, and to attest the caption of, at the foot of the account; and any parishioner, assessed or liable to be assessed, may inspect the said account and take a copy thereof."
4. By 17 G. 2. c. 38. § 3. "if an overseer remove from the parish before his year expires, he shall deliver his account, so verified to the other overseer, or to the churchwardens."
5. And by 17 G. 2. c. 38. § 5. "on the death of an overseer during the year, his representative shall account within forty days after his decease."
6. By 9 G. 1. c. 7. § 2. "the overseers cannot include in their accounts, any monies expended for the relief of poor persons, who are not registered in the poor book of

- the parish, excepting such as they shall so expend upon sudden and emergent occasions."
7. But from this restraint the monies expended in reimbursing constables under 18 G. 2. c. 19. must be excepted.
 8. So also the monies paid for the relief of families of militiamen.
 9. And the monies paid under the 36 G. 3. c. 23. for relieving of paupers at their own houses, in the manner that statute directs.
 10. By 17 G. 2. c. 38. § 11. succeeding overseers may, out of monies levied on rates made by their predecessors, pay their predecessors such monies as they have expended for the relief of the poor.
 11. And by 41 G. 3. c. 23. § 9. succeeding overseers may now make a rate for the purpose of reimbursing their predecessors such monies as they have so expended.
 12. Accounts of churchwardens and overseers of poor, to be submitted by them to two or more parties at a special sessions, held under 17 G. 2. c. 38. 30 G. 3. c. 49. § 1.
 13. In case of refusal or neglect, &c. justices may commit him or them to gaol until, &c. *Id. ibid.*
 14. Churchwardens, &c. may appeal to quarter sessions, *Id.* § 2, 5.
 15. Proceedings of quarter sessions, final, *Id.* § 5.
 16. It seems that under the 43 Eliz. c. 2. the allowing of overseers' accounts by two justices, was a judicial act, for it is said that their authority in this respect must be exercised by themselves, and cannot be delegated to any others, *Rex v. Turner*, i. pl. 31.
 17. And yet where an overseer tendered an account to two justices, it was held that they had no authority to commit him; because an account had been tendered, although the account only contained the gross sums he had received and paid, and he refused to give any account of the particulars, *Rex v. Corrocke*, i. pl. 31.
 18. For that they ought to receive it, and strike out what is amiss, and balance the account, *Rex v. Walrod*, i. pl. 314.
 19. But since 17 G. 2. c. 38. it seems to be considered as a ministerial act only; for where an overseer tendered an account consisting of gross sums, and on his refusing to explain the particulars, they refused to swear him to the truth of the account; the king's bench granted a mandamus to the justices, commanding them to swear the overseer to the truth of the account, *Rex v. Justices of Middlessex*, i. pl. 31.
 20. For it seems that the statute 17 G. 2. c. 38. has in this respect repealed the 43 Eliz. c. 2. *Rex v. Coode*, i. pl. 29.
 21. The remedy therefore against unjust accounts is by an appeal to the sessions made by a party grieved against the allowance of the accounts.
 22. But an objection may be made by an appeal against the rate, as if a rate be made for reimbursing overseers for the expence of law proceedings; for as the inhabitants are aggrieved as soon as the money is improperly assessed upon them, they need not wait until it is raised and expended, before they make their objection by appeal against the allowance of the accounts, *Rex v. Micklefield*, i. pl. 528.
 23. The expences of a constable in prosecuting an assault committed on him in the execution of his duty, cannot be paid by the overseers out of the poor's rate; and are not within the 18 G. 3. c. 19. § 4. *Rex v. Bird*, i. pl. 478.
 24. Where a party applies for a mandamus to compel churchwardens to allow him to inspect their accounts according to the directions of the 17 G. 2. c. 38. he must state some special reason for which he wishes to see the accounts. It is no answer to the application, that the statute imposes a penalty upon a churchwarden improperly refusing the inspection. *Rex v. Clear*, i. pl. 520.
 25. A previous application, however, to two justices under the 43 Eliz. c. 2. is said to be still necessary for the purpose of grounding an appeal, *Rex v. Whitour*, i. pl. 386.
 26. And when the sessions have ascertained the balance, two justices out of sessions may enforce the payment of it, *Rex v. Carter*, i. pl. 348.
 27. But if an overseer refuse to deliver an account, he may be committed, *Rex v. Medg-cold*, i. pl. 516.
 28. That is, if he refuse to deliver his account to the succeeding overseers, Anonymous, i. pl. 511.
 29. And they may be compelled to deliver over the parish books by mandamus, *Rex v. Blatshaw*, i. pl. 515.
 30. For they are public books, *Rex v. Clapham*, i. pl. 518.
 31. But the party proceeded against must appear to be overseer; for a churchwarden cannot be committed for not accounting, although the office of overseer is annexed to the office of churchwarden, *Rex v. Peake*, i. pl. 508.
 32. A commitment of an overseer to the county gaol, for not accounting or for not paying the balance, must conclude, "that he remain until he shall account," *Rex v. Mayor of Northampton*, i. pl. 509.

43. So the court will not, upon removal of an order of sessions allowing overseers' accounts, which is good upon the face of it, go into the merits of those accounts upon affidavits, *Rex v. James*, i. pl. 331.

II.

Of making up and delivering the Account.

44. Overseers must make up and pass their accounts annually, as prescribed by the above statutes; for if the same persons be appointed overseers for four successive years, they cannot make a rate in any one year, to reimburse themselves the monies they have expended during any preceding year, *Rex v. Goodchap*, i. pl. 319.

45. And now, for now by 41 G. 3. c. 23. § 9. Overseers are authorized to make a rate, for the purpose of paying to their predecessors, such monies as they may have expended for the use of the poor.

III.

Appeal against Overseers' Accounts.

46. By 41 Eliz. c. 2. § 4. "if any person shall be aggrieved by any act done, either by the overseers or the two justices, the general quarter sessions shall make such order therein, as to them shall be thought convenient."

47. And as this statute is silent as to time, the parish might appeal to any subsequent sessions, *Rex v. Bousin*. Sett. Poor, 111.

48. But now by 17 G. 2. c. 38. § 4. "the appeal against the allowance of overseers' accounts, must be made by the party grieved at the next general or quarter sessions."

49. But reasonable notice of such appeal must be given to the overseers, or the justices may adjourn the appeal.

50. And by 41 G. 3. c. 23. § 4. such notice must be in writing signed by the appellant or his attorney, specifying the grounds of appeal, and be left at the abode of the overseers, and no other grounds shall be allowed.

51. Where overseers accounts were not allowed until the last day, when an effectual notice of appeal to the then next sessions would have been given, and it did not appear when the party objecting had notice of the allowance; held that a notice of appeal to the next subsequent sessions, for which an effectual notice of appeal could not be given, was good, *Rex v. Justices of the Duchy*, i. pl. 329.

52. The 13 G. 3. c. 42. § 5 gives an appeal in case the majority of the overseers object to it, *Rex v. Lancashire (Justices)*, i. pl. 335.

53. The court will not, upon removal of an order of sessions allowing overseers' accounts, which is good upon the face of it, go into the merits of those accounts upon affidavits, *Rex v. James*, i. pl. 331.

54. Overseers cannot charge in their accounts for money paid as a salary to one of the overseers, *Rex v. Glyde*, i. pl. 532.

55. Where an order of sessions confirming overseers' accounts was in this form, "upon the appeal of J. G. against the accounts of H. and W. overseers, be the said G. objected to the sum of 12l. 10s. in the said account paid to W. as a salary, it is ordered that the said accounts be confirmed;" this was considered as an order confirming the said accounts in respect of the charge for the salary, and therefore the court quashed the order, but sent the case back to be reheard as to the nature of the payments, *Id. ibid.*

56. Where the appeal is against the overseers' accounts by individuals paying rates within the parish, the certiorari is not taken away by 50 G. 3. c. 49.; that act only applying to appeals by the overseers against the disallowance of any items in their accounts by the magistrates, *Rex v. Bird*, i. pl. 478.

57. But it has been decided, that it is not necessary, in order to give the justices at sessions jurisdiction to hear an appeal against overseers' accounts, that such accounts should previously have been examined and allowed pursuant to 50 G. 3. c. 49., *Rex v. Colchester (Justices)*, i. pl. 534.

58. A notice of appeal against overseers' accounts stated that the appellant objected to certain specified payments alleged in the accounts to have been made to persons specified by name in the notice: held that the notice was bad, because it did not state the cause and ground of appeal as required by 41 G. 3. c. 23. § 4. The attorneys, some days before the appeal was tried, agreed to admit on the trial of the appeal, that the sums objected to were paid to the person to whom it was alleged in the accounts that they were paid: held that this was not any waiver of the irregularity in the notice, because the consent of the attorneys was not signified in open court, *Rex v. Sheard*, i. pl. 536.

59. The sessions may award costs to the party in whose favour the appeal is determined.

60. But to authorize the sessions to award costs, the appeal must be entered; for a notice of intention to appeal is not sufficient for this purpose, *Rex v. Justices of Essex*, ii. pl. 1017.

51. It is said that to ground an appeal it must appear that the accounts have been laid before two justices, *Rex v. Bartlett*, i. pl. 325.
52. The sessions cannot, either under 43 Eliz. c. 2. or 17 G. 3. c. 38., make any order on an appeal against overseers' accounts, unless a previous application has been made to two justices, under 43 Eliz. c. 2. *Rex v. Whitear*, i. pl. 326.
53. But it is clear that the appeal must be to the next sessions, *Rex v. Justices of Berkshire*, i. pl. 327.
54. For in this respect the 17 G. 2. c. 38. has repealed the 43 Eliz. c. 2. *Rex v. Coode*, i. pl. 290.
55. And a party is said to be aggrieved the moment an illegal rate is made, *Rex v. Mickfield*, i. pl. 328.
56. But it is said that the sessions may refer the settlement of the accounts, either to the two justices to whom they were submitted, or to any other two justices, *Rex v. Townsend*, i. pl. 323.
57. And when the balance is ascertained may, in the like manner as the two justices, order the overseers to pay it over, *Rex v. Hedges*, i. pl. 322.
58. And if the sessions do not order the balance to be paid over to the succeeding overseers; two justices out of sessions may be compelled by *mandamus* to enforce the payment thereof, *Rex v. Carter*, i. pl. 348.
59. For the effect of the appeal is the ascertaining the quantum of the arrears, and then the statute attaches and enables the magistrates out of sessions to enforce payment of the balance, *Id. ibid.*
60. But they cannot order them to pay over a sum charged as paid, which in fact has not been paid, *Rex v. Moulsworth*, i. pl. 321.
61. Where overseers' accounts allowed by three justices were delivered to the successors so late that they could not appeal to the next sessions: held that an appeal to the next practicable sessions was in time, and that the justices might then respite the appeal, although the respondents objected to the delay, *Rex v. Thackwell*, i. pl. 337.
62. Upon an appeal against an order for the allowance of overseers' accounts, a magistrate, a rated inhabitant of the parish, cannot vote either on the determination of the appeal or on a question as to granting a case for the opinion of this court, *Rex v. Gudridge*, i. pl. 338.

IV.

Payment of the Balance.

63. By 43 Eliz. c. 2. § 2. "overseers are di-

rected to pay over the balance in their hands to their successors, within four days after they are out of office."

64. And by 45 Eliz. c. 2. § 4. "on default thereof their successors may, by warrant from two justices levy the same by distress and sale."
65. And if no distress can be made, the defaulting overseer may be committed by two justices to the county gaol, until he shall pay over the balance.
66. But by 17 G. 2. c. 38. § 1. "the time for paying over the balance, is enlarged not within fourteen days after other overseers are appointed."
67. And the succeeding overseers are authorized to levy arrears of rates made by their predecessors, and pay them out of sums expended by them for the use of the poor, as are allowed to be due to them in their accounts.
68. But the parishioners have no right to call upon the overseers for the payment of the balance, until a fortnight after *Easts*, *Rex v. Egginton*, i. pl. 34.
69. And by 17 G. 2. c. 38. § 2. "if the overseers shall refuse to make up the account or neglect to pay the balance, two justices may commit them to the common gaol until they comply."
70. The 50 G. 3. c. 49., which requires that churchwardens and overseers to submit their accounts to two justices at specified sessions, to be holden within the 14 days appointed by the 17 G. 2. c. 38., for delinquent in the said account to the succeeding overseers, is not a substitution in lieu that provision in the 17 G. 2., but is cumulative; and if the overseer refuse to deliver in such account to the succeeding overseers within the 14 days, he may be committed by two justices for such refusal, *Lester's case*, i. pl. 3.
71. If there be divers overseers of adjacent townships, who severally collect under a rate, the justices may order a balance remaining in the hands of one of them to be distributed among the others, if necessary, *Rex v. Borough of Banbury*, i. pl. 2.
72. The balance remaining in the hands of the old overseers must be paid to the successors, and cannot be retained without the consent of the parish, to answer contingencies, *Rex v. Justices of Somerset*, i. pl. 3.
73. The justices therefore who take the accounts, may make an order for such a purpose, *Rex v. Topsham*, i. pl. 1.
74. And if they do not pay over such balance accordingly, they may be indicted, *Rex v. King*, i. pl. 2.

75. Or the balance may be levied by distress under the 43 Eliz. c. 2., *Rex v. Turner*, i. pl. 341.

76. Or they may be committed under the 17 G. 2. c. 38. § 2., *Rex v. Egginton*, i. pl. 347.

77. If the sessions balance the account, and state the sum due to the parish, but do not direct the overseer to pay that sum over to the succeeding overseers, two justices out of session may, after demand and refusal to pay, enforce the payment by virtue of the 43 Eliz. c. 2. § 2., and 4 & 17 G. 2. c. 38. § 3., *Rex v. Carter*, i. pl. 348.

78. The sessions may now by 41 G. 3. c. 23. order the succeeding overseers to pay to their predecessors sums of money due to them for law expenses, paid by them on account of the parish, *Rex v. St. Peter's*, i. pl. 343.

79. The overseers cannot retain any part of the balance, as to pay an attorney's bill of expenses for suing for money to be laid out in charitable uses, *Rex v. Somersetshire*, i. pl. 344.

80. But the sessions may order such expenditure to be repaid to the overseers by their successors. 41 G. 3. c. 23. § 9.

81. So one overseer may be ordered to reimburse another overseer out of money already raised, *Rex v. Limehouse*, i. pl. 342.

82. Overseers cannot take credit in their accounts for money paid as a salary to an assistant overseer, although such assistant overseer be appointed, and the salary fixed, by the consent of the parish, *Rex v. Webb*, i. pl. 346.

83. For the statute 43 Eliz. c. 2. has thrown the whole burden of the office on the overseers, and they are to discharge it themselves without fee or reward, i. pl. 346. text.

84. If on an appeal against overseers' accounts, the sessions disallow some of the items, and do not order the overseers to pay the balance to the successors, two justices out of sessions may enforce payment; and if they refuse to interfere, a mandamus will lie to compel them, *Rex v. Carter*, i. pl. 348.

85. If the overseers, after allowance of their accounts by two justices at special sessions, had an order by the justices to pay over the balances to their successors, which order is confirmed on appeal, refuse to pay such balance, the two justices may issue their warrant to levy the same under 30 G. 3. c. 49., upon the application of one of the succeeding overseers, although the rest of the churchwardens and overseers

refuse to concur in such application; therefore where the justices refused to issue such warrant upon such application, the court granted a mandamus, *Rex v. Pascoe*, i. pl. 349.

86. An overseer of the poor is discharged by his bankruptcy, and certificate from a debt due in respect of a sum of money in his hands as overseer at the time of his bankruptcy, although this happen before the expiration of his year of office, before which time he cannot be compelled to account, *Rex v. Tucker*, i. pl. 350.

OVERSEERS,

PROCEEDINGS FOR AND AGAINST.

I. Of Protection in Office.

II. Liabilities of, Punishment for Misbehaviour, &c.

I.

Protection in Office.

1. By 43 Eliz. c. 2. § 19. "if any action shall be brought against an overseer or other person for taking a distress, making a sale, or for doing any other thing under this act, he may plead not guilty, or otherwise make avowry, cognizance, or justification, stating that the distress, sale, trespass, or other thing complained of, was done under the authority, and according to the tenor, purport, and effect of this act, without expressing or rehearsing any other matter contained in the act."

2. By 43 Eliz. c. 2. § 19. "and the plaintiff may reply generally, that the defendant did the act supposed in the declaration of his own wrong," &c.

3. By 43 Eliz. c. 2. § 19. "the issue shall be tried by verdict, and not otherwise."

4. By 43 Eliz. c. 2. § 19. "and if the verdict shall be for the defendant, or the plaintiff shall be nonsuited, the defendant shall have treble damages and costs."

5. If a person assessed to the poor's rate refuse to pay, and on the overseers' going to make a distress, the party voluntarily deliver his goods to the officer, and afterward bring trespass against the overseer, the defendant shall have treble damages and costs, *Oakley v. Salter*, i. pl. 351.

6. But the costs shall not be trebled, but the damages found by the jury only, *Ibid.* i. 351. text.

7. And on the plaintiff's being nonsuited, the overseer shall have a writ of enquiry to ascertain the damages, *Brampton's case*, i. pl. 352.

8. So also after nonsuit in replevin, when the defendants avow as overseers, they

- shall have a writ of enquiry, *Herbert v. Waters*, i. pl. 357.
9. So on a verdict found in favour of the defendant, they shall have a writ of enquiry, if the jury omit to assess damages, *Bennet v. Hart*, i. pl. 360.
10. By 7 Jac. 1. c. 5., and 21 Jac. 1. c. 12. "such defendants may plead the *general issue*, and give the special matter in evidence."
11. By 7 Jac. 1. c. 5. "the judge, on verdict for the plaintiff, or on the plaintiff's becoming nonsuit, or suffering a discontinuance, shall allow to the defendant *double costs*."
12. By 21 Jac. 1. c. 12. "actions on the case, trespass, battery, or false imprisonment, brought against overseers or other persons acting under them, shall be laid in the county where the fact was done, and not elsewhere; and if the plaintiff shall not prove the fact committed within the county, the defendant shall be found *not guilty*, and have all the other advantages and remedies of the above statutes."
13. The above statutes of 7 Jac. 1. c. 5., and 21 Jac. 1. c. 12., giving *double costs*, do not extend to ecclesiastical matters, *Kuchwal v. Smith*, i. pl. 355.
14. Same point, *Stone v. Ligar*, i. pl. 356.
15. Nor do the statutes 7 Jac. 1. c. 5., and 21 Jac. 1. c. 12. § 3., extend to actions against parish officers for a *non-feasance*, such as the non-payment of money laid out for the support of one of their paupers by another parish into which he went; and for which an action of *assumpsit* was brought against them, *Atkins v. Banwell*, i. pl. 364.
16. But to entitle an overseer to double costs under these statutes, it must be certified by the judge who tried the cause, that he was acting in the execution of his office, *Grindley v. Holloway*, i. pl. 362.
17. But on a special verdict, where it appears that the act was done by the defendant by virtue of his office, the master must tax double costs, though there has been no certificate or allowance by the judge who tried the cause, *Rams v. Picking*, i. pl. 362.
18. Parish officers, or persons acting on their behalf, are not entitled under statutes 7 Jac. 1. c. 5., and 21 Jac. 1. c. 12., to double costs upon judgment as in case of a nonsuit in an action brought against them for the price of goods sold and delivered to them for the use of the poor, *Blanchard v. Bramble*, i. pl. 366.
19. By 17 G. 2. c. 38. § 8. "where any distress shall be made for money justly due for the relief of the poor, the distress shall not be deemed unlawful, nor the parties trespassers, for any want of form in the appointment of the overseers; nor the parties distraining be deemed trespassers *ab initio* on account of any irregularity afterwards done by them; but the party injured may recover full satisfaction for the special damage in an action of *trespass*, or on the case, at the election of plaintiff."
20. By 17 G. 2. c. 38. § 9. "and if the plaintiff recover in such action, he shall have his *full costs*, and all the like remedies for the same as in other cases of costs."
21. But by 17 G. 2. c. 38. § 10. "no plaintiff shall recover for any such irregularity, if *tender of amends* have been made by the party distraining, before action brought." This act extends to give costs to overseers on an indictment against a man for refusing to obey an order of sessions respecting the payment of a poor's rate, *Rex v. Byne*, i. pl. 359.
22. By 24 G. 2. c. 44. § 1. "no writ shall be sued against any justice for what he shall do in the execution of his office, until notice in writing of such intended writ shall have been given to him, one calendar month before the same is sued out."
23. By 24 G. 2. c. 44. § 2. "he may tender amends, and plead the same in bar of the action."
24. By 24 G. 2. c. 44. § 3. "the plaintiff must first prove such notice to have been given, before he can recover."
25. By 24 G. 2. c. 44. § 4. "if the justice has neglected to tender amends, he may pay the money meant to be tendered into court."
26. By 24 G. 2. c. 44. § 5. "no evidence shall be given by the plaintiff of any other cause of action than that contained in the notice."
27. And by 45 G. 3. c. 141. § 1. "in all actions against a *justice of peace*, for or on account of any conviction made by him on any penal statute, if such conviction shall have been quashed, the plaintiff shall not recover more than two-pence damages, and no costs, unless it shall be alleged in the declaration that the act complained of was done maliciously, and without any reasonable and probable cause."
28. By 43 G. 3. c. 141. § 2. "the plaintiff shall not recover any penalty levied under such conviction, if it be proved on the trial that he was guilty of the offence for which he was convicted, and had suffered no more than the law inflicts on the offence."
29. By 24 G. 2. c. 44. § 6. "no action shall be brought against any constable or other officer, or person acting by his order, or in his aid, for any thing done under a war-

suit from a justice, until a demand in writing has been made of a copy of the warrant, and the same has been refused or neglected, six days after such demand."

30. And it hath been determined, that overseers of the poor; though not expressly named, are officers within the protection of the statute, *Netting v. Jackson*,

i. pl. 561.

31. By 24 G. 2. c. 44. "and if after such demand and compliance therewith, any action shall be brought without making the justice or justices who sealed the warrant defendants; the jury, on the said warrant being produced and proved, shall acquit the defendants, notwithstanding any defect of jurisdiction in such justice or justices."

32. And therefore overseers cannot be sued in trespass for levying a poor rate by distress, without joining the magistrates who granted the warrant in the action, *Harper v. Carr*,

i. pl. 365.

33. If therefore an overseer or constable be sued in trespass, for executing a justice's warrant, and the magistrate is not joined, the defendant is entitled to a verdict on such warrant being proved, he having first complied with the plaintiff's demand of a perusal and copy of the warrant before the action brought, though not within six days after such demand, as the act directs, *Jones v. Vaughan*.

34. But it hath been held, that if *replevin* be brought against an overseer on a distress taken for non-payment of the poor's rate, the justices who issued the warrant need not be made parties to the action; for *replevin* is an action *in rem*; to which the above statute has been never held to extend, *Milward v. Coffin*,

i. pl. 266.

35. And therefore, to an action of *replevin* against overseers, &c., for the recovery of goods levied under a distress for a poor's rate, without joining the justices who granted the warrants, it is not necessary to aver that a demand was made of the perusal and copy of the warrant; for in this species of action, overseers are not protected by 24 G. 2. c. 44. *Fletcher v. Wilkins*,

i. pl. 565.

36. By 24 G. 2. c. 44. "if the action be brought jointly against the justice, and against the overseers or other officer, then, on proof of such warrant, the jury shall find for such overseer or other officer, notwithstanding such defect of jurisdiction as aforesaid."

37. It has been said, that if *trespass* be brought for distraining for a poor's rate levied, which was not in the occupation of the party, it is not within the act; for

it is not like the case where the justice hath a general jurisdiction, and whose warrant the officer is implicitly bound to obey, but that the justice, in such case, hath only a special jurisdiction, upon the application of the overseer to enforce the payment of the tax, which he the overseer is presumed to have regularly made, *Milward v. Coffin*,

i. pl. 266.

38. *Sed quare*; for the 24 G. 2. c. 44. § 6. says, that a verdict shall be given for the overseers, notwithstanding any defect of jurisdiction in the justice or justices.

39. By 24 G. 2. c. 44. "if the verdict shall be given against the justice, the plaintiff shall recover the same costs as the plaintiff would have been liable to pay, if the verdict had been against him."

40. By 24 G. 2. c. 44. "where in such case the plaintiff shall obtain a verdict against any justice, and the judge shall certify that the injury complained of was wilfully and maliciously committed, he shall have double costs of suit."

41. But by 24 G. 2. c. 44. § 8. "no action shall be brought against any justice, or other officer, unless within six calendar months after the act committed."

42. The acts of a justice of the peace who has not duly qualified are not absolutely void, and therefore persons seizing goods under a warrant of distress, signed by a justice who had not taken the oaths at the general sessions, nor delivered in the certificate required, are not trespassers, *Margate Pier Company, v. Hannam*,

i. pl. 567.

43. An information in the nature of *quo warranto* will not lie against overseers, *Rex v. Daubney*,

i. pl. 558.

44. The justices in sessions, cannot award an attachment against overseers, *Rex v. Bartlett*,

i. pl. 554.

45. An overseer may have an action for saying, that "he is a bribing knave, and has cheated the parish," *Thomas's case*,

i. pl. 553.

46. *Replevin* is not an action within the 24 G. 2. c. 44. § 6. which protects constables, &c., (and amongst others parish officers, distraining for poor's rate) acting under a magistrate's warrant from any action until demand made or left at their usual place of abode, &c., by the party intending to bring such action, &c., *Fletcher v. Wilkins*,

i. pl. 565.

47. The 59 G. 3. c. 12. § 17. vests in the churchwardens and overseers of the poor, in the nature of a body corporate, all buildings, lands, and hereditaments belonging to the parish: held that, in order to constitute the body corporate intended by

the act, there must be two overseers and a churchwarden or churchwardens, and that when there were two overseers appointed, one of whom was afterwards appointed (by custom) sole churchwarden, the act did not vest parish property in them, *Woodcock v. Gibson*, i. pl. 368.

II.

Liabilities of, and Punishment for Misbehaviour, &c.

48. By 43 Eliz. c. 2. § 2. "overseers neglecting to meet on a Sunday once a month in the parish-church, to consider of some good course to be taken in all things concerning their office, or being negligent in their office, shall, for every such default of absence or negligence, forfeit 20s.
49. But this penalty for not meeting in the church, cannot be inflicted on overseers of extra-parochial places; for the inhabitants of such places have no church to meet in, *Rex v. Rufford*, i. pl. 373.
50. Nor can an overseer be adjudged guilty of absenting himself from such monthly meetings, until he has had personal notice of his appointment, *Rex v. Harman*, i. pl. 376.
51. By 43 Eliz. c. 2. § 4. "the subsequent churchwardens and overseers, by warrant from two justices, may levy by distress and sale, all arrears upon any account to be made by the preceding overseers."
52. By 43 Eliz. c. 2. § 4, "two justices may commit overseers for refusing to account."
53. By 15 & 14 Car. 2. c. 11. "if any overseer refuse to receive a person removed by a warrant from two justices, he shall forfeit 5*l*."
54. By 3 Will. & Mary, c. 11. § 12. "in all actions at *Westminster*, or at the *assizes* to recover money misapplied by overseers, the evidence of the parishioners, other than such who receive alms, shall be taken and admitted."
55. By 17 G. 2. c. 5. "the justice before whom any idle and disorderly person shall be convicted, may order the overseer to pay 5*l*. to the person who apprehended the offender, and if he shall refuse or neglect so to do, it may be levied by distress."
56. By 17 G. 2. c. 38. § 14. "if any overseer of the poor, or other officer of any parish shall neglect or refuse to obey and perform the several orders and directions of this act, or any of them, if no penalty is before provided, he shall forfeit a sum not exceeding 5*l*., nor less than 20*s*."
57. By 9 G. 3. c. 37. § 7. "if any overseer, of the poor, shall make such payments in base or counterfeit coin, the offence may be heard in a summary way, and on conviction he shall forfeit from 10 to 20*s*. for each offence."
58. By 53 G. 3. c. 55. "two or more justices at any special or petty sessions of the peace, upon complaint or oath, of neglect, of duty or disobedience of any lawful warrant or order, of any constable, ~~overseer~~ of the poor, or any peace or parish officer, may, after summons, impose upon conviction, a fine not exceeding 40*s*., to be levied by distress and sale, and to be applied to the relief of the parish to which such overseer belongs; but any party aggrieved may appeal to the quarter sessions."
59. Overseers are indictable for not making a rate to reimburse constables, *Rex v. Barlow*, i. pl. 369.
60. Overseers are indictable at sessions for refusing to account, within the time limited, for the monies they have received for the relief of the poor, *Rex v. Cummings*, i. pl. 370.
61. Overseers are indictable for not relieving the poor, or for relieving them without occasion, *Towney's Case*, i. pl. 371.
62. Overseers are punishable for not levying penalties inflicted on other overseers, *Anonymous*, i. pl. 372.
63. Overseers may be indicted for disobeying an order of justices, *Rex v. Jones*, i. pl. 377.
64. The court of king's bench will grant an information against an overseer, for removing a poor pregnant woman sick and near her time, to prevent her becoming chargeable, *Rex v. Busby*, i. pl. 375.
65. So also for not receiving a pauper regularly sent to them by an order of two justices, *Rex v. Davis*, i. pl. 378.
66. But if an overseer make an alteration in a poor-rate after it has been allowed by two justices, with the approbation of such justices, he shall not be punished by information, *Rex v. Barratt*, i. pl. 382.
67. The court will not grant an information against overseers for procuring the marriage of a pauper, with a view to burthen another parish, *Rex v. Compton*, i. pl. 383.
68. Although it was formerly granted against an overseer, the only wealthy man in the parish, for giving a poor man of another parish a sum of money to marry a poor woman of the parish, of which he was overseer, *Rex v. Tarrant*, i. pl. 379.
69. But a conspiracy by parish officers to marry a female pauper settled in the parish of A. to a pauper settled in the parish of D., in order to bring a charge on the

- parish of *B.*, is an indictable offence, *Rex v. Edwards*, i. pl. 374.
70. For the Court will never quash an indictment for a serious offence, except on the clearest and plainest grounds; and therefore will not quash one against overseers, for keeping paupers in a filthy unwholesome room, *Rex v. Wetherhill*, i. pl. 384.
71. The Court will not quash an indictment against an overseer, but will drive the party to his demurrer, *Rex v. Parry*, i. pl. 380.
72. And if the misconduct of parish officers be gross, and their circumstances wealthy, the Court will perhaps grant a criminal information against them, *Cald.* 247, i. pl. 374. n.
73. But excepting under extraordinary circumstances the Court have resolved not to grant information in such cases, *Rex v. Haigher*, i. pl. 383. n.
74. If on a dispute respecting a rate for the relief of the poor the matter be referred, and in the mean time the overseer borrow money on his own notes for the relief of the poor, and make no rate to reimburse himself, the lender may recover the money lent in an action for money had and received to his use, *How v. Keech*, i. pl. 381.
75. So if a person, not a parish officer, take care of a pauper, he may recover the money against the overseer whose duty it was to provide for such pauper, *Simmons v. Wilcott*, i. pl. 385.
76. Where a pauper residing in the parish of *A.* received during illness a weekly allowance from the parish of *B.*, where he was settled: held that an apothecary who had attended the pauper may maintain an action for the amount of his bill against the overseers of *B.*, who expressly promised to pay the same, *Wing v. Mill*, i. pl. 388.
77. The statute 55 G. 3. c. 137. § 6. only prohibits churchwardens or overseers from supplying the workhouse or the poor of the parish generally, and therefore where an overseer receiving an order for the relief of *J. S.*, an individual pauper, paid *J. S.* out in money, and by the consent of *J. S.* gave her the remainder in goods from his shop: held that he was not liable to the penalty of 100*l.* imposed by the act, *Proc. v. Mowring*, i. pl. 389.
78. *J. S.* being the master of the workhouse, appointed by and receiving orders from the guardians of the poor of the parish of *N.*, bought provisions from *A. B.* one of such guardians: held that *A. B.* was liable to the penalty of 100*l.* imposed by the 55 G. 3. c. 137. § 6. *West v. Andrews*, i. pl. 391.

79. When a farmer who furnished the produce of his land to the poor of the parish of which he was churchwarden at a fair market price, he was held liable to penalties under the 55 G. 3. c. 137. § 6. *West v. Andrews*, i. pl. 391.
80. A guardian of the poor, appointed under 22 G. 3. c. 83., is within the 55 G. 3. c. 137. § 6., notwithstanding the former act, § 42. imposes a penalty for the supply of provisions for the poor by such guardians. Where a count stated that *A. B.* supplied the poor of the parish of *W.* with provisions, and the evidence was that he supplied the poor of the parish of *W.* and other parishes in a workhouse: held first, that it was no variance, the proof being larger than the allegation. Secondly, that the objection as to a variance between the allegation of a supply of the poor in the workhouse not being taken at *nisi prius*, could not be afterwards available, *West v. Andrews*, i. pl. 392.
81. By statute 55 G. 3. c. 137. § 6. no churchwarden or overseer of the poor, either in his own name or in the name of any other person, shall supply for his own profit any goods, materials, or provisions for the use of any workhouse, or otherwise for the support or maintenance of the poor in any place for which he shall be appointed overseer, during the time he shall retain such employment, nor shall be concerned directly or indirectly in supplying the same, or in any contract or contracts relating thereto, under the penalty 100*l.*: held, that an overseer who supplied coals indirectly for the use of the poor was not liable to any penalty unless he did it with a view to his own profit, *Skinner v. Buckee*, i. pl. 394.
82. By statute 17 G. 5. c. 3. § 2. it is enacted "that overseers of the poor shall permit inhabitants of the parish to inspect rates at all seasonable times, and shall upon demand forthwith give copies of the same to any inhabitant of the parish;" and by § 5. "if any overseer shall not permit an inhabitant to inspect the rate, or shall neglect to give copies thereof as aforesaid, such overseer for every such offence shall forfeit and pay to the party aggrieved the sum of 30*l.*:" held first, that in order to entitle a party to sue for the penalty under the statute, he must show that he has sustained an injury by the act of the overseer: held secondly, that there must be a demand to inspect the rate made at a reasonable time and place, and *semble* that the house of the overseer is the place at which the demand ought be made; thirdly, although the statute says that copies shall

upon demand be forthwith given, yet the overseer is entitled to a reasonable time for making them out, *Spenceley v. Robinson*, i. pl. 395.

P.

PACKET BOAT.

See POOR'S RATE VII.

PALACES.

1. A bishop's palace is liable to be assessed to the poor's rate, for there can be no prescription against the payment of this tax, *Subdenry v. Chichester*, i. pl. 141.
2. So where the site of a palace is demised to a subject, for a certain permanent interest, the grantees who occupy it, are rateable for such property to the poor, *Duke of Portland's case*, i. pl. 155.
3. For although the royal palaces are not rateable to the poor in the hands of the crown, yet if servants or others occupy any part of them, as for instance, a keeper's lodge separately and distinctly, they are liable to be rated as the occupiers, whether they pay for them by rent or service, *Rex v. Matthews*, i. pl. 170.
4. So the ranger of a royal park is rateable, as such, to the poor for inclosed lands in the park, yielding certain profits; but not for the herbage and pannage used for the king's deer, *Lord Bute v. Grindal*, i. pl. 185.
5. See also *Jones v. Maunsell*, i. pl. 176.
6. Neither are stables rented by the colonel of a regiment for the use of the crown liable to be rated, *Lord Amherst v. Lord Somers*, i. pl. 188.
7. But if an act of Parliament order that all churches, chapels, warehouses, "and all other public buildings whatsoever," shall be assessed, and direct that the rate shall be paid by "the owners or proprietors thereof," stables leased to a colonel of the Guards on his Majesty's behalf, and used and occupied by the Guards, are rateable on the owner, though they are not in his occupation, *Eckersall v. Briggs*, i. pl. 195.
8. So palaces or other places the property of the crown, as barracks, if in the possession of individuals, as for instance, the commanding officer, and he derives therefrom any personal benefit, he shall be rated in proportion to the value of the benefit he receives, *Rex v. Terrot*, i. pl. 218.

PARISH-CLERK.

1. Serving the office of parish-clerk, though

chosen by the parson, and not by the parishioners, gains a settlement, *Gallon v. Mawick*, i. pl. 264.
 2. Serving the office of parish-clerk, although without licence of ordinary, gains a settlement, *Peake v. Bourn*, i. pl. 265.

PARK.

See POOR'S RATE.

PERSONAL PROPERTY.

1. The 43 Eliz. c. 2. § 1. only mentions, "lands, houses, tithes impropriate, appropriation of tithes, coal-mines, and alehouse underwoods," as the subjects of taxation for the relief of the poor.
2. But notwithstanding this, all property, both real and personal, is taxable, *Rex v. Earby*, i. pl. 186.
3. For the poor's rate is a personal tax, even with respect to land, *Theod v. Starkey*, i. pl. 180.
4. The rate however, can only be made on such personal property, as the owner is in the visible occupation of, *Anonymous*, i. pl. 186.
5. The stock of a trader therefore is liable to taxation, *Anonymous*, i. pl. 189.
6. But the property rated must be the clear, liquidated, ascertained personal estate and stock; and not that which is casual, fluctuating, and uncertain, *Rex v. Canterbury*, i. pl. 168.
7. And it must appear to be the property of the persons in possession, and productive, *Rex v. Darlington*, i. pl. 206.
8. The bare possession of personal property, is evidence of the possessor's liability to be rated, but it must appear that such property belongs to the possessor; that it is productive, and that it is not subject to incumbrances equal to its value, before the rate can be made, *Rex v. Dursley*, i. pl. 208.
9. But stock in husbandry is not rateable, unless it be of such a nature as to be considered stock in trade, *Rex v. Barking*, i. pl. 145.
10. And the difficulty of rating it is so great as to render it almost impossible, for it would be compelling persons to discover their debts, *Rex v. Canterbury*, i. pl. 168.
11. The stock rated, therefore, must be particularised in the rate, in order that the court may see that it is personal property, in such a situation as the law will consider as visible and productive, *Rex v. Whitney*, i. pl. 165.
12. Thus the stock in trade of common brewers, is not that species of visible property

that can be rated to the poor. *Rex v. Ringwood*, i. pl. 168.

13. Same point, *Rex v. Mast*, i. pl. 204.

14. So where the order stated that A. B. was the proprietor of stock in trade as a draper; that his profits thereon were 15 per cent. per annum; and that he ought to be rated so much for such stock and profit, it was held not to be a description of property sufficiently visible to render it rateable, *Rex v. Andover*, i. pl. 171.

15. But where it has been the usage of a parish to rate personal property in a particular manner, as to charge a clothier 1d. or other just proportion, as his share or contribution towards the relief of the poor in respect of his stock in trade, such rate is good, *Rex v. Hill*, i. pl. 173.

16. So where, under the like usage, a butcher whose returns in trade were estimated at 20l. a week, was assessed 4s. as his share or contribution in respect of his stock in trade, the rate was held good on the authority of *Rex v. Hill*.

Rex v. Rodd, i. pl. 178.

17. So also, where under a like usage, a rate was made on personal property consisting in ships employed in carrying on the Newfoundland trade, *Rex v. White*, i. pl. 199.

18. But merely being in possession of personal property is not sufficient to render it liable to this rate; it must appear to be the productive property of the person rated, *Rex v. Dursley*, i. pl. 203.

19. See also *Rex v. Mast*.

20. But if stock in trade is once rated, and no appeal is made against the rate, it is strong *prima facie* evidence to prove its liability to the rate, *Rex v. Dardington*, i. pl. 206.

21. But household furniture, money out at interest, officers and sailors' pay, and the salaries of clerks in the customs, or of servants to traders, are not rateable to the poor, *Rex v. White*, i. pl. 199.

22. Lands purchased by a company, and converted into a dock according to an act of parliament, which declares that the shares of the proprietors shall be considered *personal property*, are rateable to the poor in proportion to the annual profits, *Rex v. Mill Dock Company*, i. pl. 184.

23. If an act of parliament direct the poor's rate to be made "on all persons having and using stocks and personal estates," or having money out at interest, these words will not warrant an assessment "on money vested in the public funds or on government security, for stock cannot be considered money out at interest," or as "local visible property, within the parish," *Rex v. Maddermarket*, i. pl. 217.

PHILANTHROPIC SOCIETY.

A person employed by the philanthropic society to superintend the children at annual wages, under an agreement that she should have a dwelling free from taxes, and certain other perquisites, and who may be dismissed at a minute's warning, on receiving three months' wages, is not rateable to the poor as occupier of the house provided by the society, she having no distinct apartment therein, except a bed-chamber, and her family not being allowed to live there, *Rex v. Field*, i. pl. 201.

PHYSICIANS.

1. By 32 Hen. 8. c. 40. "the members of the college of physicians, shall not be chosen to the office of constable, or to any other office within the city."
2. But physicians have not, as surgeons have, a special custom, at common law, to be discharged from parish-offices.

POOR-HOUSE.

Masters, &c. of poor-houses, not to punish or confine beyond a limited time, 54 G. 3. c. 170. §. 7.

POOR'S RATE.

- I. Of the Statutes.
- II. Making, allowing, and publishing the Rate.
- III. For what Time to be made.
- IV. In what Place to be made.
- V. For what Purpose to be made.
- VI. In what Proportion.
- VII. Persons and Property rateable.
- VIII. Levying the Rate.
- IX. Jurisdiction of Sessions.

I.

Of the Statutes.

1. By 43 Eliz. c. 2. §. 1. "the churchwardens and overseers, or the greater part of them, shall take order from time to time, by and with the consent of two justices, to raise weekly or otherwise (by taxation of every inhabitant, person, vicar, and every other occupier of lands, houses, tithes, impropriate, appropriations of tithes, coal-mines, or saleable underwoods in the parish, in such competent sums of money as they shall think fit), a sufficient stock to set the poor on work, to relieve the lame, impotent, old, blind, and indigent, and to put out poor children apprentices."
2. By 43 Eliz. c. 2. §. 8. "the mayors, bailiffs,

- or other head-officers of every town and place corporate, and city, shall have the same authority within the limits of their respective jurisdictions, both in and out of sessions, as hereby given to county justices."
3. Therefore as this clause in the act, restrains the magistrates and justices to the limits of their respective jurisdictions, the justices for a county cannot allow a rate made by the overseers of a borough, *Rex v. Folly*, i. pl. 86.
 4. By 43 Eliz. c. 2. § 8. "every alderman of London may, within his ward, execute in every respect so much as is appointed and allowed to be done, by one or two justices of the peace of any county."
 5. By 15 & 14 Car. 2. c. 2. § 22. "the justices of the counties in which, separate overseers shall be appointed for particular townships and villages, shall have the like authority to raise and levy monies, and to do and execute every thing whatsoever within such townships and villages, as is given them to do in any parish, where the overseers are appointed under 43 Eliz. c. 2."
 6. Therefore the justices and parish-officers of a distinct jurisdiction, as of the precinct of the cathedral church at *Norwich*, may be compelled by *mandamus* to make a rate for the relief of the poor, *Liddlestone v. The Mayor of Exeter*, i. pl. 80.
 7. By 17 G. 2. c. 5. "public notice in the church shall be given by the overseers, of every rate for the relief of the poor, allowed by the justices of the peace, the next Sunday after the same shall have been so allowed; and no rate shall be valid, so as to collect and raise the same, unless such notice shall have been given."
 8. Therefore in trespass, on a distress for non-payment of the poor's rate, the publication of the rate must be proved. *Rex v. Aire and Calder Navigation*, 2 T. R. 660.
 9. But a special case, respecting the legality of a rate is good, although it do not therein appear, that the rate had been published in the church pursuant to the above statute, *Ibid.*
 10. The court of king's bench will not grant a *mandamus* to compel justices to sign a warrant of distress under the poor's rate, if it has not been published in the church the next Sunday after it was allowed, *Rex v. Newcomb*, i. pl. 88.
 11. By 17 G. 2. c. 3. § 2. "the overseers shall permit all and every the inhabitants of the parish, township, or place, to inspect every such rate at all seasonable times, paying 1s. for the same, and shall upon demand give copies thereof, to any inhabitant at the rate of 6d. for 24 names."
 12. By 17 G. 2. c. 3. § 2. "the overseers, on refusing inspection, &c. shall forfeit 20s."
 13. By 17 G. 2. c. 38. § 13. "true and just copies of all rates made for relief of the poor, shall be entered in a book within 14 days after any appeal from such rate is determined; which the overseers shall attest by putting their names thereto: which book shall be kept for public perusal."
 14. By 17 G. 2. c. 38. § 14. "overseers neglecting to perform the directions of this act, shall, where no penalty is before provided, forfeit to the use of the poor a sum not exceeding 5s. nor less than 20s."
 15. By 17 G. 2. c. 38. § 15. "the overseers, where there are no churchwardens, may do, perform, and execute all matters relating to the poor."
 16. Justices out of sessions, with consent of parish officers, may discharge paupers from the payment of parish rates, 54 G. 2. c. 170. § 12.
- ## II.
- ### Of the Making, Allowing, and Publishing the Poor's Rate.
17. The overseers and churchwardens may make a poor's rate, without the concurrence of the parishioners, *Towney's case*, i. pl. 81.
 18. And if they refuse to make a rate when it is necessary, they may be compelled by *mandamus*, *Rex v. Barnstable*, i. pl. 85.
 19. But such rate is not binding until it has been allowed by two justices out of sessions; for the sessions cannot order an original rate to be made, *Anonymous*, i. pl. 79.
 20. This allowance however, by the two justices, is a merely ministerial act, *Rex v. Uttoxeter*, i. pl. 83.
 21. Or matter of form, *Rex v. Dorchester*, i. pl. 84.
 22. And if they refuse to allow a rate, they may be compelled by *mandamus*, *Rex v. Edwards*, i. pl. 87.
 23. And an allowance by a county justice, of a rate made in a borough, is bad, *Rex v. Folly*, i. pl. 86.
 24. The rate also must be published in the church on the next Sunday after it is allowed, or it will be a mere nullity, *Rex v. Newcomb*, i. pl. 88.
 25. And therefore if an action of trespass be brought against the overseers for illegally distraining for a poor's rate, the plaintiff must prove the publication of it, as the statute directs, *Rex v. Aire and Calder Navigation*, 2 T. R. 660.

26. But a special case from the sessions need not expressly state that the rate was published. *Ibid.*

27. The order need not set forth that the justices allowing the poor's rate, were dwelling in or near the division where the parish lies, *Cobbet v. St. Mary's, Lincoln*, i. pl. 82.

28. A poor's rate must show upon the face of it, in respect of what property the assessment is made upon each individual charged by the rate, *Res v. Aire and Calder Navigation*, i. pl. 89.

III.

Time of making the Poor's Rate.

29. The 43 Eliz. c. 2. authorizes the overseen, with the concurrence of the justices, to tax the inhabitants weekly or otherwise to the relief of the poor.

30. And therefore a poor's rate ought not to be made for a whole year, *Bishopsgate v. Beecher*, i. pl. 92.

31. But it seems that a rate made for half a year may be good, *Stevens v. Evans*, i. pl. 93.

32. *Sed quare*; for by HOLY, Chief Justice, an inhabitant cannot be rated for a whole quarter; for that by this means a man cannot move in the middle of a quarter but he must be twice charged: but this is now provided for by 17 G. 2. c. 28. which enacts, "that where any person shall come into, or occupy any premises, from which any person assessed shall be removed, or which at the time of making the rate was empty, every person so removing or coming in shall pay the rate, in proportion to their respective occupations," *Tracy v. Talbot*, i. pl. 90.

33. And therefore, because possessors are to pay, and possessions frequently change, the rate ought to be made monthly, *Res v. Littleport*, i. pl. 91.

34. And by 43 Eliz. c. 2. § 2. "the parish-officers are not obliged to meet oftener than once every month, to consider of things concerning their office."

35. But by WILMOT, Justice, whatever the law may be upon this point, the practice of overseers is not to make their rates monthly, *Stevens v. Evans*, i. pl. 93.

36. And by LORD MANSFIELD, it seems full as well to make a rate for three months, as for one month, *Res v. St. George's, Mid-dlesex*, i. pl. 94.

37. A poor's rate made for six months, prospectively, is good, *Durrant v. Bage*, i. pl. 95.

IV.

In what Place the Property shall be rated,

38. By 17 G. 2. c. 37. "waste lands improved, and lands drained, shall be rated to the relief of the poor within such parish and place, which lies nearest to such lands."

39. By 17 G. 2. c. 37. "the justices in general quarter-sessions may hear and determine disputes concerning the same, and cause the land to be fairly assessed in such parish, as they shall see proper."

40. But the allotments of the sessions shall not affect the boundaries of parishes, other than for the purpose of rating such lands.

41. A poor's rate may be made on the inhabitants of a hamlet lying within a parish, *Res v. Tamworth*, i. pl. 56.

42. On the inclosure of a waste in the parish of Dale, on which waste the land-owners of the parish of Sale have a right of common appurtenant, the allotments given in lieu of that right shall be rated to the poor of the parish of Dale, *Spence v. Kemp*, i. pl. 96.

43. If a navigation run from *Erith* to *Bed-ford*, and a sluice be erected in an intermediate parish on the said navigation, the tolls arising from such sluice may be rated to the poor of such intermediate parish, although they are not there collected, and the proprietors live in a different parish, *Res v. Cardington*, i. pl. 179.

44. A barge-way and toll-gate in the parish of *Hampton Wick*, are rateable to the poor in that hamlet for such part of the tolls as become due there, notwithstanding the tolls are collected in another parish, *Res v. Mayor of London*, i. pl. 196.

45. Where by a navigation act the proprietor was intitled to a toll of 4s. a ton, for goods carried from A. to B., or from B. to A., and to a proportionable sum for any less distance, and was also enabled to appoint any place of collecting; it was held, that the tolls for goods carried the whole voyage from A. to B. are rateable in B., though in fact they are collected in a parish between A. and B., for the tolls become due where the voyage is completed, *Res v. Page*, i. pl. 97.

46. So where a navigation-act empowered the proprietors to take so much per mile per ton for all goods carried along the canal, it was held on the authority of *Res v. Page*, that they were rateable to the poor for the tolls in the different parishes where the tolls became due, that is, where the respective voyages finished; though for their own convenience they were authorized to collect the tolls where they pleased,

and did in fact collect them in other parishes, *Rex v. Staffordshire Navigation*, i. pl. 99.

47. And where goods are carried along two different lines of canal, one of which is exempted from rate on its tolls, and the voyage finishes on the unexempted line, where the tolls become due and are received, the rate shall be only in proportion to the tolls which became due on the unexempted line, *Rex v. Leeds Canal*, i. pl. 100.

48. The owners of a coasting vessel are liable to be rated in respect of the profits accruing therefrom in that parish where they themselves reside, and where the ship is registered, and where her cargoes are usually received and delivered, and her freight paid, and which is the home of the vessel when unemployed, although at the time of making the rate the ship was not actually within the parish. But they are not liable to be rated for a ship which was never locally within the parish, although the profits be there received by the owners, *Rex v. Shepherd*, i. pl. 106.

49. The proprietors of an inland navigation are rateable to the relief of the poor in every parish through which the navigation passes, as occupiers of the land situate in each parish used for the purpose of the navigation; and, therefore, where the proprietors of such navigation, which extended through different parishes, were rated in one for the entire amount of their tolls, the court held, that the rate could not be supported, *Rex v. Palmer*, i. pl. 109.

50. The proprietors of a navigation extending through several parishes are to be rated in an intermediate parish, not in respect of the riverage becoming due in that parish for goods landed, but in respect of the profits of the land used for the navigation situate within the parish, *Rex v. Portmore*, i. pl. 109.

51. By a canal act the proprietors of the *Oxford* canal were empowered to take a certain sum *per ton per mile* upon all goods. By a subsequent act for making a new canal, reciting that it was apprehended, that the making of the intended canal would be injurious to the proprietors of the *Oxford* canal, and that it had been agreed, that an indemnification should be made to them as a compensation for such injury, it was enacted, "that instead of the mileage duty, payable to the proprietors of the *Oxford* canal, it should be lawful for them to take, for all coals which should pass from the *Oxford* canal into and upon the said intended canal, so much *per ton*, without any regard to the distance the same should pass along the *Oxford* canal; and

for all other goods which should pass from any other navigable canal into and upon the *Oxford* canal, and from thence into and upon the said intended canal, or from the intended canal into and upon the *Oxford* canal, and from thence into and upon any other navigable canal, a certain other sum *per ton*, without regard to the distance the same should pass from the said *Oxford* canal: Held first, that the proprietors of the *Oxford* canal were rateable to the poor in respect of their mileage duty in every parish through which the canal passed; secondly, that they were liable also to be rated in every parish along which the canal passed for a proportion of the compensation duty, *Rex v. Oxford Canal Navigation*, i. pl. 110.

52. Several partners of a firm carried on a branch of their business in the parish of *A.* by means of a foreman and other servants, who resided in the parish in a house, part of the premises where the business was carried on, but no one of the partners resided in that parish: Held, that they were not rateable to the relief of the poor in that parish, in respect of their stock in trade there, *Rex v. North Curry*, i. pl. 111.

53. Ships are rateable to the poor in the parish to which they belong, that is, the port in which they are registered, *R. v. White and others*, i. pl. 92.

V.

For what Purpose a Poor's Rate may be made.

54. By 45 Eliz. c. 2. § 1. "the poor's rate is to be made for the purpose of assisting the poor to work; for raising a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff; for the relief of the lame, impotent, old, blind, and such other among the poor who are not able to work; for putting out poor children to be apprentices; and for doing and executing all other things concerning the premises, as to the overseers shall seem convenient."

55. By 13 & 14 Car. 2. c. 12. § 12. "a rate may be made for reimbursing constables such monies as they shall have expended in relieving the poor, in conveying them with passes, and in carrying rogues, vagabonds, and sturdy beggars to houses of correction."

56. By 41 G. 3. c. 23. § 9. a poor's rate may be made by succeeding overseers for the purpose of reimbursing their predecessors.

57. But before this act a poor's rate could not be made to reimburse former overseers; for an overseer is not bound to lay

- out money till he has raised it by a rate, *Tunney's case*, i. pl. 112. n.
52. And therefore if a person was appointed overseer for four successive years, and did not make any rate in the three first to reimburse himself what he expended in those years, he could not in the fourth year make a rate for that purpose, *Rex v. Goodchap*, i. pl. 115.
53. But overseers, while in office, may make a rate to reimburse themselves for the expenses of law proceedings, if such expenses are necessarily incurred, *Rex v. Smithfield*, i. pl. 113.
54. And where a private statute enabled the overseers to make a rate for the relief of the poor, and to include in it such just and reasonable sums as they should be put to, in the execution of their offices, and they made a rate, the title of which expressed it to be for both these purposes, the court refused to quash it, although the assions on an appeal state in a case, that it was partly made to pay a debt incurred by the late overseers; the rate itself appearing on the face of it to be legal, *Rex v. Mayor of Gloucester*, i. pl. 114.
55. But a rate cannot be made to reimburse them for law expenses, after they are out of office, *Rex v. St. Peter's*, i. pl. 343.
56. Or to pay assistants overseers though allowed by a vestry, *Rex v. Welch*, i. pl. 546.
57. For the vestry cannot give them an authority which the statute does not, *Rex v. Justices of Somersetshire*, i. pl. 544.
58. Nor can a rate be made to repay money borrowed by the parish, for the purpose of rebuilding the workhouse, *Rex v. Wavell*, i. pl. 112.
59. A constable apprehended an offender for a misdemeanor committed in his presence in a place of religious worship, and carried him before a magistrate, and was bound over by recognizance to prosecute him for the offence; held, that the expenses of such a prosecution were not rates expended by him in doing the business of his township, and that he could not charge them in his accounts under 18 G. 3. c. 19. § 4., *Rex v. Scville*, i. pl. 116.

VI.

Is what Proportion the Poor's Rate may be made.

61. By 17 G. 2. c. 58. § 12. "where a person shall come into house or land assessed to the poor, he shall pay the rate in proportion to the time he has occupied the

premises, which proportion shall be ascertained by two justices."

62. The justices in sessions are the proper judges of the proportion or equality of poor-rates, *Rex v. Weobley*, i. pl. 124.
63. It is said that the most reasonable way of taxing land is by a pound rate, and of goods in the same proportion, on the amount of five per cent. of their value, *Anonymous*, i. pl. 117.
64. But the rent of houses or land is not a standing rule; for circumstances may differ, *Anonymous*, i. pl. 119.
65. Even the rent received on a lease is not to be taken as conclusive evidence of value, for if the estate were underlet at the time of granting the lease, or has become improved during the continuance of it, the assessment ought to be on its real value, *Rex v. Skingle*, i. pl. 308.
66. For every inhabitant of the parish ought to be rated according to the present value of the estate; whether it continue of the same value as it was when he purchased it, or whether it be rendered more valuable by the improvements which he has made upon it, *Rex v. Mast*, i. pl. 304.
67. Nor is the land-tax a good rule, *Rex v. Clerkenwell*, i. pl. 122.
68. And it seems clear that they cannot make a standing rate, or confirm a former rate, *Rex v. Audley*, i. pl. 120.
69. But an ancient rate may be a good rate for future assessments, although it cannot be confirmed as a standing rate, *Rex v. Wrexham Regis*, i. pl. 125.
70. If two several houses are inhabited by two families, they shall be rated separately, though they have but one entrance, *Tracy v. Talbot*, i. pl. 121.
71. If the owner of a house occupy part of it, he is liable to be rated to the poor for the whole, unless there is a distinct occupation of the rest by some other person, *Rex v. St. Mary the Less*, i. pl. 151.
72. Where the farmer is rated for the whole farm, it is no ground of objection to the rate by a third person, that a dairyman, who rented under him his stock of cows to be depastured on the same land, was not rated for such dairy; although it were stated in the case that the dairyman made a profit of the produce of the cows, independent of the profit made by the farmer; for the rate upon the farmer, for the whole farm, includes all the profit of the land and stock appertaining to it, *Rex v. Broom*, i. pl. 220.
73. A poor's rate made on three-fourths of the yearly value of lands, and on one moiety, of the yearly value of houses, is

- not disproportionate or unequal, *Res v. Brograve*, i. pl. 125.
79. A rate made on *one-half* of the rack rent of value, or rack rent of farms, and taking *one-twentieth* part of all stock, personal estate, and money out at interest, valuing the interest of such *twentieth part* at four *per cent.*, and then rating *one moiety* of such *twentieth part*, varying the proportion as circumstances require, is a good and equal rate, *Res v. Hardy*, i. pl. 126.
80. A rate on lands and houses at one penny in the pound, without making any distinction between farms, dwelling-houses, and cottages, although they had before been respectively rated in different proportions, is not unequal, *Res v. Butler*, i. pl. 127.
81. Whether houses are to be rated in a different proportion from land, must depend on local circumstances, *Res v. Sandwich*, i. pl. 128.
82. Where a navigation runs from A. to B through several intervening parishes, and the tolls for the whole navigation are collected in those two parishes, they may be assessed to the poor's rate in those two parishes for the *whole amount*, according to the proportions collected in each, *Res v. Aire and Calder Navigation*, i. pl. 130.
83. But where by a navigation act the proprietor is entitled to a toll of 4s. a ton for goods carried from A. to B., or from B. to A., and to a proportionable sum for any less distance, and is also enabled to appoint any place of collection, the tolls for goods carried *the whole voyage* from A. to B. are rateable in B., though in fact they are collected in a parish between A. and B., because the tolls become due where the voyage is completed, *Res v. Page*, i. pl. 97.
84. So where a navigation act empowered the proprietors to take so much *per mile per ton*, for all goods carried along the canal; it was held, that they were rateable to the poor for the tolls in the different parishes where the tolls became due, that is, *where the respective voyages finished*; though for their own convenience they were authorised to collect the tolls where they pleased; and did in fact collect them in other parishes, *Res v. Staffordshire Navigation*, i. pl. 99.
85. But where goods are carried along two different lines of canal, one of which is by statute exempted from being rated in respect of the tolls, and the other not; though the voyage happen to finish on the unexempted line where the tolls became due and were received, yet the canal company shall not be rated for more than such proportion of the tolls, as accrued in respect of the carriage along the unexempted line; and the toll arising in respect to so much a ton *per mile*, is to be rated only for so many miles as the goods were carried along the unexempted line, *Res v. Leeds Canal*, i. pl. 100.
86. The proportion in which the poor's rate ought to be made being left, in the first instance, with the overseers, the court of king's bench will presume that they will not make an unequal rate, and therefore, although the court will grant a *writ mandamus* to make a rate, they will not command them to make an equal rate, *Res v. Barnstaple*, i. pl. 118.
87. If, therefore, any persons assessed conceive the rate to be unequal, they must apply by appeal to the sessions, who are the proper judges of the proportion in which it ought to be made, *Res v. Wrothly*, i. pl. 124.
88. But if the sessions make a special case, and state an erroneous principle for supposing the rate equal, the court of king's bench will notice it, *Res v. Audley*, i. pl. 129.
89. So, if it clearly appear upon the face of the rate itself, that the assessments are unequal, the court will quash the rate, *Res v. Brograve*, i. pl. 125.
90. S. P. *Res v. Lakenham*, i. pl. 129.
91. Where the appellant disputes before the sessions the quantum of the rate, it is not sufficient for the respondents to shew that the appellant is in possession of some rateable property within the parish; they must also shew some probable ground for the amount at which they charge the party in the rate, *Res v. Topham*, i. pl. 296.

VII.

Of the Persons and Property liable to be rated.

92. By 43 Eliz. c. 2. "the poor may be relieved by taxation of every inhabitant, parson, vicar, and other, and of every other occupier of lands, houses, tithes, impropriate, appropriations of tithes, coal-mines, or saleable underwoods in the parish."
93. By 17 G. 2. c. 37. "waste and barren lands, which were formerly fen and marsh grounds, or covered with water, and which have been improved or drained, shall be rated to the poor."
94. Power to rate owners of certain houses instead of the occupiers, 59 G. 3. c. 12. § 19.
95. Goods of occupiers may be distrained

for rates to the amount of the rent actually due, and occupiers paying rates empowered to deduct the amount out of their rent, 59 G. 3. c. 12. § 20.

96. Receivers in certain cases may be rated as owners, 59 G. 3. c. 12. § 21.

97. Persons rated as owners may appeal, and vote in vestries, 59 G. 3. c. 12. § 22.

98. No owner not being an occupier to be rated in places where the right of voting for members to serve in parliament depends on the rating, 69 G. 3. c. 12. § 23.

99. A person living out of a parish, but having land in his own occupation and manurance within the parish, is, as the occupier of such lands, rateable to the poor, *Jeffery's case*, i. pl. 133.

100. And he may come if he will to the meetings of the parishioners, *Payet v. Crompton*, i. pl. 133. n.

101. But in such case he is charged as occupier with respect to his possession of the lands, and not as landlord with respect to his property, *Kerby's case*, i. pl. 135.

102. For a man cannot be assessed but upon the value of the real or personal estate which he occupies in the parish, *Ibid.* i. pl. 136.

103. And the rate must be made only upon the visible property, whether real or personal, which the party occupies, *Anonymous*, i. pl. 137.

104. Therefore money vested in the public funds or laid out in government securities is not rateable; for it is not local visible property in the parish, *R. v. Maddermarket*, i. pl. 217.

105. But the poor's rate is a personal tax with respect to land, but not a tax on the land, *Theed v. Starkey*, i. pl. 150.

106. Lands appropriated to the use of an hospital, if occupied, are rateable to the poor, *Anonymous*, i. pl. 143.

107. A person renting a quantity of land, together with a mineral spring thereon smother, at a gross yearly rent, is rateable to the poor in respect to the whole of such rent; though in fact the annual value of the land, independent of the spring, is only in proportion of two to eight of the reserved rent, *R. v. Miller*, i. pl. 174.

108. So the occupier of lands on which a way leave is erected, is assessable for the same, *R. v. Bell*, i. pl. 209.

109. For the property must be rated according to its then value, whether that value has or has not been increased by improvements made thereon by its owners, *R. v. Maut*, i. pl. 204.

110. The reserved rent therefore on a lease, though no premium was paid, is not con-

clusive evidence of the value of the demised premises; *R. v. Skingle*, i. pl. 208.

111. Lands purchased by a company, and converted into a dock, according to an act of parliament, which declares that the shares of the proprietors shall be considered as personal property, are rateable to the poor in proportion to the annual profits, *R. v. Hull Dock Company*, i. pl. 184.

112. But an exemption, in a private statute, of lands given to charitable purposes "from all public taxes," extends to the poor's rate, *R. v. Scott*, i. pl. 193.

113. So where a statute directs that the tolls of a canal shall be exempted from any taxes, rates, &c.; other than such as the land through which it passes would have been liable to if the act had not been made, it goes to exempt the tolls *quod* tolls altogether from being rated in respect to the line exempted, leaving the land rateable as before, *R. v. Leeds Canal*, i. pl. 100.

114. Where a statute empowered the proprietors of a canal to take rates in respect of vessels navigating the same, and expressly exempted such rates from the payment of all taxes, rates, &c., it was holden that the land occupied by the canal was also thereby exempted from poor's rate, *R. v. Proprietors of the Calder and Hebble Navigations*, i. pl. 239.

115. A rate on stock in trade, and on the house in which the stock is kept, is not double; but to tax land and the stock upon it would be double, *Anonymous*, i. pl. 138.

116. And therefore the personal property which is necessary to the manurance and cultivation of lands, is not rateable, *R. v. Barking*, i. pl. 145.

117. But if a farmer keep other stock than is necessary for the carrying on his farming; and deal in such extra stock as an article of trade, it is then rateable to the poor, *Anonymous*, i. pl. 146.

118. So also a tradesman is taxable for his stock in trade, *R. v. Barking*, i. pl. 145.

119. But it is almost impossible to rate it; for it would be compelling persons to discover their debts, *R. v. Canterbury*, i. pl. 162.

120. And the personal property that is rateable, is only that which is visible, liquidated and ascertained, not casual, fluctuating, and uncertain, *Ibid.* i. pl. 165.

121. So also it must specifically appear to be a stock that is capable of producing a profit, unincumbered, and the property of the person rated, *R. v. Dursley*, i. pl. 203.

122. For the court will not determine so

- general a question, as whether *all* stock in trade be or be not rateable to the poor, *R. v. Whitney*, i. pl. 165.
123. And therefore the court will not permit the sessions to raise the general question on this subject by omitting facts in the statement of a special case, *R. v. Hill*, i. pl. 173.
124. Though the sessions find that certain persons in a township are possessed of visible stocks in trade there, and are personally liable to be rated in respect thereof, if by law such property be liable to be rated, yet, if they also state that they are not satisfied, from the evidence offered before them, that there was any surplus profit on such stocks, by which they could amend a rate which omitted them, that concludes the question, *R. v. Macdonald*, i. pl. 226.
125. The stock in trade of *common brewers* cannot be sufficiently ascertained to be rated to the relief of the poor, *R. v. Ringwood*, i. pl. 168.
126. For the personal property, to be capable of being rated to the relief of the poor, must be *local and visible* property within the parish, *R. v. Andover*, i. pl. 171.
127. And therefore money lent on real securities locally situated elsewhere is not rateable; for this is not personal property in the parish, and it seems that money is not rateable at all, *R. v. White*, i. pl. 199.
128. But where it has been the *usage* in a parish to rate persons to the poor for their stock in trade within the parish, such persons are liable under 43 Eliz. c. 2. to be rated to the poor in respect thereof, *R. v. Hill*, i. pl. 173.
129. To render the holder of this species of property liable to be rated, the *usage* must have been uninterrupted, *R. v. Rodd*, i. pl. 178.
130. Stock in trade is rateable to the poor, notwithstanding it has never been rated, unless there be some circumstances to take it out of the general rule, *R. v. Ambleside*, i. pl. 250, 301.
131. When an act of parliament speaks of *ability* in general, and does not, like the 43 Eliz., specify any particular taxable object, or refer at all to that statute, all persons having *personal property* within the district assessed are rateable, *Atkins v. Davis*, i. pl. 186. n.
132. It seems, however, that stock in trade is rateable under the 43 Eliz. c. 2., where that property can be clearly ascertained, and where it has been the usage of the parish to rate it, *R. v. White*, i. pl. 199.
133. And every inhabitant ought to be rated according the present value of his estate, *R. v. Mast*, i. pl. 204.
134. And its having been rated one year is *prima facie* evidence of its having been productive the next, *R. v. Darlington*, i. pl. 206.
135. But *household furniture* is not rateable to the poor, *Ibid.*, i. pl. 199.
136. Under a local act 10 Ann. c. 6. for rating persons to the relief of the poor in *Norwich*, for lands and stocks, and personal estates in the parish, &c. and *money out at interest*, they are not liable to be rated for *government stocks or funds*, which are no more than perpetual annuities, the principal of which can never be realized by the holder from government, though redeemable at the pleasure of the latter, *R. v. Maddermarket*, i. pl. 217.
137. An *attorney* is not liable to be rated for the profits of his profession, *R. v. Star-tifant*, i. pl. 207.
138. The lessee of a stall in a market, which he frequents and uses regularly once a week, on market-day, is not rateable to the poor as an occupier within the parish, *Holledge's case*, i. pl. 134.
139. The lessee of market tolls in gross not incident to the soil is not rateable to the poor in respect of his occupancy thereof, *R. v. Bell*, i. pl. 237.
140. The lessee and occupier of an ancient and exclusive ferry, not being an *inhabitant resident* within the township in which one of the termini of the ferry is situated, is not liable to be rated there for any share of the tolls of such ferry, *R. v. Nicholson*, i. pl. 102.
141. And when the owner of a ferry resides in a different parish, but takes the profits of the ferry on the spot by his servants and agents, he is not rateable for such tolls in the parish where they are so collected, and where one of the termini of the ferry was situated, and on which shore the ferry boats were secured by means of a post in the ground, the soil itself at the landing places being the king's common highway, and the owner of the property having no property in, or exclusive possession of it, *Williams v. Jones*, i. pl. 103.
142. The owner of packet-boats employed under a personal contract with the post-masters in carrying the mails, &c. between *Holyhead and Dublin*, are liable in respect of the profits accruing to them from the carriage of passengers and luggage in such boats, to be rated for the same in the parish of *Holyhead*, where such owners reside, and from and to which the boats sail, where they are repaired, and where the

- poor-money is in part receivable and is collected, though they are registered in another place, *R. v. Jones*, i. pl. 219.
143. Silk throwsters working up in their mills the silk of their employers, sent to them for that purpose, are not liable to be rated in that respect, as for their stock in trade, *R. v. Sherborne*, i. pl. 221.
144. The lessor of a fair is not rateable to the poor for the profits arising therefrom, *R. v. Brograve*, i. pl. 164.
145. By the *Manchester and Salford* police act, 32 G. 3. c. 69., rates were to be made upon "the tenants or occupiers of all messuages, houses, warehouses, shops, cellars, vaults, stables, coach-houses, brew-houses, and other buildings, gardens, or garden-grounds, and other tenements situate within the towns of *M.* and *S.* respectively;" held that the owner of certain markets kept in the streets of *M.*, in which various articles were exposed to sale by persons who paid him for that privilege, but had not any stalls fixed to the ground, was not the occupier of a tenement within the meaning of the act, and therefore was not liable to be rated in respect of the profits of such markets, *R. v. Mosley*, i. pl. 248.
146. A parson is liable to the poor's rates for his tithes, as the occupier of a tenement, *R. v. Skingle*, i. pl. 148.
147. So a vicar is liable in respect of the tithes, *R. v. Turner*, i. pl. 147.
148. The liability is not removed, although he has let his tithes to the parishioners, *R. v. Bartlett*, i. pl. 149. n.
149. And the tax must be upon the parson, and not upon the lessee of the tithes, *R. v. Lambeth*, i. pl. 149.
150. A sum of money, payable annually in lieu of tithes, is rateable to the poor, *Louides v. Horne*, i. pl. 175.
151. So payments in lieu of tithes settled under a compromise between a parson and a parish, and confirmed by act of parliament, are rateable to the poor, *Rann v. Picking*, i. pl. 179.
152. But the parochial assessments for the vicar of *St. Michael's* in *Cocentry*, established by 19 G. 3. c. 60, are not rateable to the poor, *R. v. Toms*, i. pl. 177.
153. By an enclosure act it was provided, that a certain corn rent, "free from all taxes and deductions whatsoever, except the land-tax," should be issuing out of the lands to be enclosed, and other lands in the parish, and to be paid to the rector in lieu of all great and small tithes, &c.: held that this corn rent was not liable to be assessed to the relief of the poor, *Mitchell v. Fordham*, *Addend.*
154. The proprietors of the tithes of fish, titheable by custom, are liable to be rated to the poor, *R. v. Carlisle*, i. pl. 190.
155. The lessees of all those fishings of the halves and halvendoles, with the appurtenances as to the halves due and accustomed, within the river *Severn* between certain limits within a manor bordering on the said river, and of all royal fishes taken between the said limits, put and wheel-fishing excepted, under an annual rent, are liable to be rated to the poor for such fishery, *R. v. Ellis*, i. pl. 233.
156. The preacher of a meeting-house is not liable, as preacher, to the poor's rate in respect of the meeting-house, for he is no more chargeable as an occupier than any of his audience, *R. v. Southwark*, i. pl. 151.
157. So a person employed by the *Philanthropic Society* to superintend the children at annual wages, under an agreement that she should have a dwelling free from taxes, &c. with certain other perquisites, and who may be dismissed at a minute's warning on receiving three months' wages, is not rateable to the poor, as occupier of the house provided by the society, she having no distinct apartment therein except a bedchamber, and her family not being allowed to live there, *R. v. Field*, i. pl. 201.
158. So a house converted into a *conventicle*, and used not for the purposes of profit, but of preaching only, is not rateable to the poor, *Anonymous*, i. pl. 152.
159. So the trustees of a *Quakers' meeting-house*, of which no profit is made by the pews, &c. are not rateable to the poor, *R. v. Woodward*, i. pl. 200.
160. So an *alms-house* wholly occupied by objects of charity, or their attendants, and of which no profit is made, is not rateable to the poor, although the absolute property of it is in the person who gives the alms, *R. v. Waldo*, i. pl. 182.
161. But the objects of a charitable foundation who are in the actual occupation of the alms-houses and lands for *their own benefit*, in the manner prescribed by the rules of the institution, and liable to be dismissed for any breach of such rules, are rateable in respect of such occupation, *R. v. Munday*, i. pl. 211.
162. So the master of a *free school*, appointed by the minister and inhabitants of the parish under a *charitable trust*, whereby a *house, garden, &c.* were assigned "for the habitation and use of the master and his family, freely without payment of any rent, income, gift, or sum of money, or other allowance whatsoever," for the

- teaching of ten poor boys of the inhabitants, is rateable to the poor for his occupation of the same, *R. v. Catt*, i. pl. 205.
163. So a private building always used as a chapel, and, by contract, never to be used for any other purpose, if a profit be made of it, is liable to be rated to the poor, *Robson v. Hyde*, i. pl. 181.
164. The trustees of a Methodist chapel receiving money annually for the rent of the pews, are liable to be rated for the profits made of the building, though in fact they expend the whole of what they receive in making disbursements for repairs, &c. and to attendants in the chapel, and in paying the salaries of the preachers, *R. v. Agar*, i. pl. 229.
165. The tolls arising from the light-house at *Harwich* are not rateable to the poor, *R. v. Rebowe*, i. pl. 166.
166. The tolls of a light-house situated in the township of *Tynemouth*, which tolls were collected out of the township in the several ports at which the vessels passing by the coast afterwards arrived, are not rateable *qua* tolls in the township; and the residence in such light-house by one as servant to the owner, at an annual salary, to take care of the light, is the occupation of the master, who alone can be rated in respect of such occupation of the toll-house, *R. v. Tynemouth*, i. pl. 225.
167. Where a poor's rate was imposed upon a light-house, together with the duties and contribution money payable in respect of ships passing by the same, and the light-house was occupied by a servant of the owner, and was situated in the parish, but the duties were collected out of the parish: held that these duties did not constitute part of the annual profits of the house or land where light was placed, and were not rateable to the poor, *R. v. Coke*, i. pl. 254.
168. The toll of a corporation is liable to be rated to the poor, *R. v. Wickham*, i. pl. 140.
169. The grantee of the right of navigation of the river *Ouse*, is rateable to the poor in respect of the tolls arising from a sluice erected on the navigation, *R. v. Cardington*, i. pl. 172.
170. The profits arising by tolls from a navigable canal are rateable to the poor, *R. v. Aire and Calder Navigation*, i. pl. 189.
- S. P., *R. v. Page*, i. pl. 97.
171. A barge way and toll-gate purchased by the corporation of *London*, by virtue of an act of parliament for the more effectually completing the navigation of the river *Thames*, empowering the city to levy tolls and duties towards the charges of the navigation, are rateable to the poor for the tolls, *R. v. City of London*, i. pl. 196.
172. But where, by an act of parliament, the commissioners of a navigation were authorized to take tolls, the whole of which was directed to be applied to public purposes, it was held, that the tolls were not rateable to the poor; for though, unquestionably, corporations may be rated, yet there must be some person or persons in the beneficial occupation of the property on which the rate is to attach; but in this case, the commissioners have a bare naked trust, not coupled with any interest *R. v. Salter's Sluice Navigation*, i. pl. 198.
173. Commissioners under the *Beverley* and *Barnston* drainage act, who purchased land and erected buildings in the parish of *Sculcoates* for the drainage, but who received no benefit from such property in *Sculcoates*, but the whole benefit was derived to the owners of lands in other parishes, drained by means of such outlet, are not rateable in *Sculcoates* for such benefit. *R. v. Sculcoates*, i. pl. 101.
174. The Duke of *B.* being empowered by parliament to erect a lock upon the *Rockdale* canal, and there receive certain rates as a compensation for certain profits relinquished by him; held that a poor's rate on his trustees, occupiers of the *Rockford* canal, lock, or tunnel, dues or rates, (which dues or tolls are only other names for the lock rated therewith) is good, though the trustees were not found to be inhabitants of the township, *R. v. Macdonald*, i. pl. 226.
175. Where a river navigation extended through several parishes, and certain tonnage dues became payable in respect of goods carried along the line of navigation, and landed at a wharf locally situate within the parish of *B.* Held, that a rate on the proprietor of those dues for their whole amount in the parish of *B.*, stated to be for river tonnage, could not be considered as a rate upon that part of the river locally situate within the parish of *B.*, but as a rate upon the parts of the river situate as well within as without the parish, and that it could not, therefore, be supported, *R. v. Milton*, i. pl. 107.
176. The proprietors of an inland navigation were rated to the relief of the poor for a certain number of acres of land within the township, occupied by their canal, and were assessed in respect of that land, at a sum not exceeding that which they actually received for the passage of goods over that part of the canal situate within

the township: held, that this rate was good, *R. v. Trent and Mersey Nav.*

i. pl. 246.

177. A canal act directed that the company should be rated for all lands and buildings in the same proportion as other lands and buildings lying near the same, and as the same would be rateable if they were the property of individuals in their natural capacity; and a subsequent act directed that all rates and assessments upon the personal estate of the company should be assessed in every parish in proportion to the length of the canal in such parish. Held, that the company were liable to be rated for their lands, &c. only at the same value as other adjacent land, and not according to the improved value derived from the land being used for the purposes of the canal, *R. v. Proprietors of Grand Junction Canal*,

i. pl. 240.

178. By a canal act of the 31 G. 3. c. 51. § 77. it was enacted, that the company should be rated to all parochial taxes in respect of their lands, &c. in the same proportion as other lands lying near the same should be rated, and as the same land would be rateable in case the same were the property of individuals in their natural capacity. By a subsequent act of the 38 G. 3. c. 51. § 20. it was enacted that the company should be rated to all parochial taxes in respect of the lands used by them for the purposes of the said navigation, in the same proportion as other lands and buildings adjoining or lying near the canal should be rated; but it was further enacted, that it should be lawful for the company to agree with any owner of lands adjoining their lands, taken for the purpose of the said navigation, for an exemption from all rates and taxes in respect of such lands, and for charging the same upon the adjoining lands of such persons; and in all such cases the parochial taxes, rates, &c. which might be thereafter charged upon or payable in respect of the lands so taken for the purposes of the said navigation should be rated and charged upon such adjoining lands, and upon the owners and occupiers thereof, and the lands of the company should be exempted and discharged therefrom: held, first, that by 31 G. 3. c. 51. § 77., the company were not liable to be rated for the land used for the purpose of the canal according to its improved value; held, secondly, that the 7th section of the 31 G. 3. was not repealed by the 20th section of the 38 G. 3., and that the company were not liable to be rated for the improved value of the land, *R. v. St. Peter the Great*, i. pl. 253.

179. The governors of *St. Luke's Hospital* are not liable to be rated to the poor, for they are not beneficial occupiers, but mere nominal trustees, *R. v. St. Luke's*,

i. pl. 137.

180. So also the governors of *St. Bartholomew's* are not rateable to the poor; for though a corporation, yet the members of it cannot be considered as the occupiers of any part of the hospital, and they cannot be charged to the poor in any other capacity, *R. v. St. Bartholomew's Hospital*,

i. pl. 161.

181. But a corporation seized of lands in fee for their own profit are, within the meaning of the 43 Eliz. c. 2. *inhabitants or occupiers* of such lands, and, in respect thereof, liable, in their corporate capacity, to be rated to the poor, *R. v. Gardner*,

i. pl. 187.

182. But where a corporation is seized in fee of certain unclosed lands, which are stocked with the cattle of the resident burgesses, or the widows of such, who alone are permitted by the burgesses to claim such right, and also by poor parishioners, who are admitted to such enjoyment from charity; the land is liable to be rated. *Quare*, Who shall be considered as the occupiers? *R. v. Aberavon*,

i. pl. 214.

183. Where a corporation, consisting of a mayor, aldermen, and twenty-four capital burgesses, was seized in fee of certain pasture lands, and appointed a ranger to keep the keys of the gates, clean the ditches, preserve the fences, and impound cattle trespassing thereon: and at a court held annually, made such regulations concerning their pastures and the number of cattle each burgess was to turn on, and the sum to be paid in respect thereof, which money, after deducting the expences of management of the land, was distributed among the burgesses who did not turn on: held, that the corporation were liable to be rated to the poor, as the beneficial occupiers of those pastures, *R. v. Sudbury*,

i. pl. 244.

184. The corporation of *Bath*, under the powers given them by 6 G. 3. c. 70., erected reservoirs for water in the parish of A., from which by means of pipes (laid by them under the same authority) they supplied the inhabitants of the parishes of A., B., and C. with water, and derived profit. Held, that the corporation were rateable in the parish of A. for so much of the profits arising from these reservoirs as they made in the parish of A., but not for the entire profits in A., B., and C., *R. v. Corporation of Bath*,

i. pl. 104.

185. The burgesses of *Nottingham*, and the occupiers of ancient messuages there, had as such, for a certain portion of the year, a right to turn cattle into certain fields, and to exclude during that period the owner of the soil: held, that this was a mere right of common, and not rateable to the relief of the poor, *R. v. Churchill and Booth*, i. pl. 251.
186. An act of parliament having vested the after-math of a certain meadow in trustees upon certain trusts, with power to let the said after-math in *pastures*, for horses, &c. or to demise the same for a term of years: held, that the trustees having let out the after-math in *pastures* (as it was called) at so much a head for horses, &c. to various persons for no certain term, and in no certain proportions, must themselves be taken to be the occupiers of the land, *R. v. Trustees of Tewkesbury*, i. pl. 228.
187. By an act of parliament the *Birmingham Gas Light and Coke Company* had power given them to supply the town of *B.* with gas, and to lay down pipes for the conveyance of gas from the manufactory to the houses of the consumers. Under this act the company purchased lands and buildings, and there placed retorts, &c. necessary for the manufacture of gas and coke, and fixed in the streets trunks, pipes, &c. for the conveyance of gas. The company derived a considerable profit from the manufacture and sale of coke and gas. The stock in trade and the profits of other manufactories within the parish of *B.* were not rated to the poor: held, that the company were not rateable to the amount of the profits of their trade, but for a sum equal in amount to that for which the premises would let to other persons willing to carry on the same business, *R. v. Birmingham Gas Light and Coke Company*, i. pl. 245.
188. By an act of parliament a company was established for the lighting the town of *B.* with gas, and they were authorized, with the consent of certain commissioners (appointed under another act of parliament passed for the lighting and paving the town of *B.*), to break the ground and lay their pipes in the streets of *B.* The company having so laid their pipes for the purpose of conveying the gas, were held to be rateable to the poor in respect of the land occupied by their pipes, and to the extent of the increased value of the land in consequence of its being used by them for the purpose of conveying the gas, *R. v. Brighton Gas Company*, i. pl. 252.
189. Where a corporation is seised in fee of lands which, by the custom, are annually meted out under the control of a leet jury, according to a certain stint, to such of the resident burgesses who choose to stock the same, they paying 9s. 4d. to each of the other burgesses who do not stock; the burgesses who so stock are *tenants in common* of the land so occupied by them, and, as such *occupiers*, are liable to be rated for the same to the poor, *R. v. Watson*, i. pl. 216.
190. So also where the persons belonging to an hospital, as at *Chelsea Hospital*, have separate and distinct apartments, in which they live as in houses of their own, they are occupiers of their respective mansions, and rateable to the poor, *Ayr v. Smallpiece*, i. pl. 154.
See *R. v. Terrott*, i. pl. 215.
191. So the servants of the king, occupying separately houses and land, are rateable to the poor, for it is immaterial whether they pay for them in *rent* or in *services*, *R. v. Matthews*, i. pl. 170.
192. But an officer of the Salt Office is not liable in respect of his salary, *R. v. Skelfleet*, i. pl. 160.
193. Nor are officers in the navy or merchants' service liable for their pay, *R. v. White*, i. pl. 199.
194. Nor the salaries of officers of the customs, or merchants' clerks, *R. v. White*, i. pl. 199.
195. A bishop is liable to be rated in respect to his *palace*; for there can be no prescription against this tax, *R. v. Chickender*, i. pl. 141.
196. The site of a royal palace, granted for a permanent interest, is rateable to the poor, *Duke of Portland's case*, i. pl. 153.
197. But the royal palaces are not rateable to the poor, *R. v. Matthews*, i. pl. 170.
198. The ranger of a royal park is rateable, as such, to the poor, for inclosed lands in the park yielding certain profits; but not for the *herbage* and *pannage*, which yields no profit, *Lord Bute v. Grindall*, i. pl. 185.
199. And *qu.* Whether the *herbage* and *pannage* of a forest are rateable to the poor? *Jones v. Mawnsell*, i. pl. 176.
200. Nor the heriots or other casualty to profits of a manor, *R. v. Vande-vall*, i. pl. 156.
201. But *ground rents* are rateable, *R. v. Gibbs*, i. pl. 142.
202. Woods consisting of *timber trees*, when the underwood is left for *standards*, are not rateable to the poor, *R. v. Minchin-Hampton*, i. pl. 158.
203. *Saleable underwoods* are rateable annually to the relief of the poor in proportion

- to their value, though they should happen not to be cut down more than once in 21 years. *R. v. Mirfield*, i. pl. 231.
204. Firs and larches planted with oaks for the purpose of sheltering the latter, and out from time to time as the oaks grew larger and required more space, but when once cut, not growing again, and some of them yielding a profit by sale, are not rateable underwoods within the 43 Eliz., the primary object of planting them being to protect the oaks, and not to derive a profit by them *per se* by sale, *R. v. Ferrybridge*, i. pl. 243.
- Semle*, that they are not underwood at all, *Id. ibid.*
205. Houses, shops, and sheds, which render as annual revenue, are rateable to the poor, i. pl. 139.
206. If two several houses are inhabited by two families, they shall be rated separately, though the house has but one entrance, *Tracey v. Talbot*, i. pl. 144.
207. If the owner of a house occupy part of it, he shall be rated for the whole, unless there is a distinct occupation of the rest by some other person, *R. v. St. Mary the Less*, i. pl. 197.
208. One who went from home with his family for nearly a year, but left his assistant to carry on his business in his shop in one room of the house, which for this purpose was parted off by laths from the rest, and left the key of the house-door with a friend, and had the garden cultivated for his own benefit as usual, is liable to be rated to the relief of the poor as the occupier of the whole house, *R. v. Aberystwith*, i. pl. 224.
209. Chambers in an inn of court or chan-cery are not rateable, provided the inn be extra-parochial, *Mason v. Horsenail*, i. pl. 153.
210. It seems that the pantheon, playhouse, and other places of public amusement, are rated, i. pl. 166.
211. A light-house seems rateable for the building only, *R. v. Rebooe*, i. pl. 166.
212. The profits of a weighing machine house are rateable to the poor, *R. v. St. Nicholas, Gloucester*, i. pl. 180.
213. A house with a carding machine is rateable to the poor with respect to the profits of the machine, *R. v. J. Hog*, i. pl. 186.
214. Stables rented by the colonel of a regiment by order of the crown for the use of the regiment, are not rateable to the poor; for neither the possessions of the crown or of the public are liable, and the stables thus used must be considered as in the occupation of the public, *Lord Amherst v. Lord Somers*, i. pl. 188.
215. But where the sessions found that the master gunner at *Seaford* was the occupier of the battery-house, it was held that that fact fixed his liability to be rated, although the battery house is the property of the crown, and from whence he is removable at pleasure, *R. v. Hurdie*, i. pl. 191.
216. And the owner of stables in the parish of *Marybone*, rented by a colonel of a troop of horse by the authority of the king, for the use of the troop, is liable to assessments under a private act, which provides that rates shall be paid on public buildings by the owner or proprietors; but the colonel cannot be considered as the occupier, on account of such stables being used for such public purposes by him, *Eckersall v. Briggs*, i. pl. 195.
217. So where the commanding officer in barracks had distinct apartments allotted him, one in particular for transacting the business of the regiment, and the other fitted up for the accommodation of himself and his family, who resided there with him, containing, among others, a kitchen wash-house, and coach-house, together with a stable, yard, and garden, it was held that he was rateable to the relief of the poor for the same; he having a beneficial enjoyment of them beyond his necessary accommodation as an officer for the purpose of public service, *R. v. Terrott*, i. pl. 213.
218. A canteen in barracks demised to *B.* by the barrack-board for a year, at a rent of 15*l.* for the canteen and buildings, and also the farther sum of 510*l.* for the privilege of using the same as a canteen, and selling therein provisions and liquors, &c., usually sold by suttlers, with power of distress for the aggregate sum, was held to be one entire rent for the canteen; and therefore *B.* was held rateable to the relief of the poor, as occupier of the canteen, in the respect of the 525*l.* aggregate rent, and not merely in respect of the 15*l.*, *R. v. Bradford*, i. pl. 235.
219. Houses built on land embanked from the Thames in pursuance of 7 G. 3. c. 37., are not liable to be assessed to the rates imposed by 11 G. 3. c. 29., *Eddington v. Borman*, i. pl. 194.
220. And an exemption in a private statute of lands given to charitable purposes "from all public taxes, charges, and assessments whatsoever, civil or military," has been held to extend to the poor's rate, *R. v. Scott*, i. pl. 193.
221. Lead mines, the lessees of which pay no rent, but only a certain part of the lead ore gotten thereout, are not liable in respect of the mines to be rated to the

- poor, *Smelting Lead Company v. Richardson*, i. pl. 159.
222. But the lessee of the crown of lead mines is rateable to the poor for the profits arising from *lot* and *cope*, which are duties paid to him by the adventurer, without any risk on his part, *Rowls v. Gells*, i. pl. 169.
223. So also a person entitled to *toll tin* and *farm dues*, which is a certain dish or measure arising out of tin bounds, viz. one *fifteenth* of all tin gotten in the bounds, and one *twelfth* thereof after the fifteenth is deducted, is liable to be rated to the poor in respect thereof, *R. v. St. Agnes*, i. pl. 192.
224. The trustees under the will of a person seised in fee of two-third parts of a manor, subject to certain leases to a company of adventurers, of the mines of lead, tin, and copper ore, and other minerals, under the moors, commons, or wastes of the manor, at a rent certain, are not rateable to the relief of the poor for such rent; and therefore a rate by which they were rated in one gross sum for such rent, and also in respect of their being owners and occupiers of the moors, commons, and wastes within the manor, was held ill, *R. v. Welbank*, i. pl. 234.
225. Where a rate was imposed upon *P.*, owner of the lead ore in certain lead mines, in respect of the duty lead reserved in a lease of said mines, being one-fifth share of the lead to be smelted from the ore raised from said mines. Held, that this reservation was in the nature of a rent, and therefore not rateable, *R. v. Earl of Pomfret*, i. pl. 236.
226. The lessees under the lord of the manor, of lot and free share of all calamine raised within the manor, are liable to be rated to the poor as occupiers of land in the parish where the manor lies, none of them being resident in the parish, *R. v. Baptist Mill Company*, i. pl. 232.
227. Where the owner of the soil by indenture granted to certain adventurers full and free liberty to dig, mine, and search for tin, tin ore, &c., and the same to take and convert to their own use, subject to a reservation therein contained, and to make such adits, shafts, &c., as they should think necessary, yielding and paying to him one full eighth share of all such tin, tin ore, &c., the same having been first spalled, picked, or otherwise made merchantable and fit to be sold, and the indenture contained a proviso that the same should be paid in ore or the value thereof, which had been sold, and the same had received it in money. Held, that for this, his one eighth share, he was liable to be rated as an occupier of land, the reservation operating as an exception out of the demise, and not being of the nature of a rent, *R. v. St. Austell*, i. pl. 242.
228. *Clay-pits* of which profit is made are rateable to the poor, *R. v. Brown*, i. pl. 220.
229. Landlords not resident within the parish, having leased lead mines and other minerals, with liberty to the tenants to dig, &c., reserving a certain annual rent, and also certain proportions of the ore which should be raised, are at any rate not assessable to the relief of the poor for such certain rent, no ore being raised, whatever the question might be as to the proportion of ore reserved when in fact any should be raised, *R. v. Bishop of Rochester*, i. pl. 227.
230. *Lime works* are rateable in the hands of the occupier, though there be risk and expence in the working, and the profits are uncertain, *R. v. Altherbury*, i. pl. 210.
231. A *slate work*, (or, as improperly called a *slate mine*) is rateable to the poor, *R. v. Woodland*, i. pl. 212.
232. But *iron mines* are not rateable to the relief of the poor; and if rated conjointly with *coal mines*, the coal whereof was raised by the owner of the lands for his own use, in smelting the iron, without ascertaining the proportion at which each was rated, the rate is bad, *R. v. Canningham*, i. pl. 215.
233. Where the owner and occupier of an iron-stone mine erected an engine for the purpose of draining the water from the mine, and used it for no other purpose: Held, that he was not rateable to the poor in respect of the engine, *R. v. Bilton*, i. pl. 255.
234. The lessee of a coal-mine is liable to be rated to the poor, although he make no profit of the mine, *R. v. Parrott*, i. pl. 208.
235. Where a coal-mine, becoming unproductive, ceases to be worked, the lessee is no longer liable to be rated for it to the relief of the poor, although he be still bound by his covenant to pay the rent reserved to his landlord. *After* where the mine is itself productive, although it be worked to a loss by the lessee, after deducting the proportion of the gross value of the produce reserved to the owner, *R. v. Bodsworth*, i. pl. 218.
236. The lessee of coal mines is rateable for the amount of royalty or rent which he pays, and in neither case is any allowance

- to be made for money expended in rendering the mines productive. *R. v. Attwood*, *Addend.*
237. The owner and occupier of coal mines is rateable to the poor at the sum for which the owner would let, subject to outgoings, *R. v. Attwood*, *Addend.*
238. The warden of THE FLEET is liable to the poor's rate for the profits of his office, *R. v. Eyles*, i. pl. 183.
239. If A. has an exclusive right of using a way-leave over land, which he holds in common with B., paying B. a certain sum yearly, and has the privilege of using a way-leave occupied by C. paying him so much per ton for the goods carried over it; A. is not liable to be rated in relief of the poor in respect of either such way-leaves, *R. v. Jolliffe*, i. pl. 187.
240. But the occupier of land on which a way-leave is erected for the purpose of carrying coals, is rateable for the same to the poor, whether his title to it be good or bad, *R. v. Bell*, i. pl. 209.
241. Land of which the annual value is improved by a spring rising within it may be rated to the poor at such improved value, although the owners of that land, who are also occupiers, do not receive any of the profits derived from the said spring, nor does any part become due in the parish where the land lies, *R. v. New River Company*, i. pl. 251.
242. Where a company were empowered by act of parliament to lay under ground, through the streets of a town, main pipes for the conveyance of water, and the inhabitants, with the company's consent, to lay pipes communicating with such main pipes to their houses, paying to the company a rate for such privilege; held, that the company were rateable to the poor in the parish where the main pipes lay in respect of those pipes, and the rates paid thereon, *R. v. Rochdale Waterworks*, i. pl. 105.
243. As to the rateability of the London Dock Company, *R. v. St. George, Middlesex*, i. pl. 232.
244. The Hull Dock Company were held rateable in respect of the tonnage duties received by virtue of the statute 14 G. 3. c. 36, although it appeared that the expenditure in repairs during the period for which the rate was made exceeded the amount of the duties received, *R. v. Hull Dock Company*, i. pl. 238.
245. Where a canal was made under the 8 G. 3. c. 38. which contained no clause as to the mode of charging it to the parochial rates, and another canal was made under the 23 G. 3. c. 92., and was therein

- directed to be rated in a special manner, and these two canals were incorporated by the 24 G. 3. by which it was provided that all the clauses, powers, provisions, restrictions, exemptions, &c., contained in each of the two former acts should still remain distinct from each other, and afterwards by 58 G. 3. c. 19., reciting that it was expedient to extend one system of management to the whole canal, it was enacted, "that all the canals, &c. so made as aforesaid under the former acts or any of them, should be deemed part, parcel, and member of the Birmingham Canal Navigation, and be considered as included and governed by all the clauses, &c., in the 23 & 24 G. 3., (save and except so much thereof as related to the exemption from stamp-duties on the quantum of tolls to be collected,) as if the same had been described in the 23 G. 3. as part of the works to be made and done under and by virtue of that act." It was held that this provision only incorporated these canals, &c., for the purpose of management, and that it did not authorize the canal originally made under the 8 G. 3. to be rated to the parochial taxes in the special manner pointed out by the 23 G. 3., *R. v. Birmingham Canal Company*, i. pl. 241.
246. By an act for clearing, lighting, watching, and regulating the streets of a township, the commissioners were authorized to ascertain the sum to be raised by rates or assessments on the several inhabitants of the township, and to raise such sums from time to time by rate or assessment upon the tenants and occupiers of all messuages, houses, warehouses, shops, cellars, vaults, stables, coach-houses, brew-houses, and other buildings, gardens, or garden-grounds, and other tenements in the township; by another clause, the occupier of any messuage, dwelling-house, or warehouse, or other building, or of any other tenement of the yearly value of 50*l.* within the township, was appointed a commissioner. Held, that under this act the trunks and pipes, works, and other apparatus of a water company for the supply of the town with water, did not constitute a tenement within the meaning of the act, and therefore the company were not liable to be rated in respect of such property, *R. v. Manchester and Salford Waterworks*, i. pl. 247.
247. By a statute of the 9 & 10 W. 3. the poor of the town of Kingston-upon-Hull are placed under the management of a corporation established by that act, and are to be maintained by money to be levied "by taxation of every inhabitant,

and of all lands, houses, tithes impropriate, appropriation of tithes, and all stocks and estates in the said town in equal proportions, according to their respective worths and values." Upon an appeal against a rate made by virtue of this act, it appeared that it omitted, first, persons not resident in *Hull* but having stock in trade there, which had produced a specified profit in the last year; secondly, a tenant of houses which he underlet at a specified profit, the under-tenants being rated but excused from paying on account of poverty; thirdly, owners and part owners of ships registered at *Hull* and trading to and from that port, and within the port at the time the rate was made. Some of these persons were resident in *Hull*, others were not. Some profits had been derived from the ships in the preceding year, but the appellants could not show the amount. Held, that the act in question made all personal property rateable whether the owner were or were not resident in *Hull*, and that consequently the first and third classes of persons ought to have been included in the rate, and that it was not incumbent on the appellants to show the amount of the profits made by the ships, for that it being established they were profitable, they ought not to have been altogether omitted; secondly, that the tenant of houses underlet as before mentioned, was not liable to be rated. The *Hull Dock Company* were rated at the full amount of their profits without first making any deduction for the poor's rate. Held that this was wrong, that the "worth and value" could only be the profits, *minus* the outgoings, and that therefore supposing other property to be rated at a rack-rent, the poor's rate should have been calculated upon such a sum as would together with the rate make up the whole amount of profits, *R. v. Hull Dock Company*, i. pl. 249.

248. The proprietors of certain lime-stone quarries agreed to deliver to a canal company yearly such quantities of good lime-stone as the canal company should direct, at the rate of 7*d.* per ton, and if they should at any time neglect to deliver the quantities required, it should be lawful for the company to enter into or upon the lands or lime-stone quarries of any of the proprietors, and to take such quantities of lime-stone as they should think proper, paying 2*d.* per ton. The proprietors of the lime-stone quarries having failed to supply the lime-stone required, the company entered and continued for more than

20 years to work the quarries and take the lime-stone at 2*d.* per ton. Held, however, that the company had not any exclusive occupation, but a mere privilege, and consequently that they were not liable to be rated to the poor, *R. v. Trent and Mersey Navigation*, i. pl. 250.

VIII.

Of levying the Poor's Rate.

249. By 43 Eliz. c. 2. § 4. "the present as well as the subsequent overseers may, by warrant from two justices, levy the sums of money assessed for the poor's rate, and all arrears thereof, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale of the offender's goods, rendering to the parties the overplus; and in defect of such distress, two justices may commit the defaulter until payment."
250. By 43 Eliz. c. 2. § 8. "the warrant of distress may be granted as well by city magistrates as by county justices."
251. By 16 G. 2. c. 18. "although the distress has relation to taxes to which they are chargeable."
252. By 17 G. 2. c. 38. § 7. "the goods of any person assessed and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found in such county or precinct, on oath thereof made before some justice of any other county or precinct (which oath shall be certified), such goods may be levied in such other county or precinct."
253. By 17 G. 2. c. 38. § 11. "in case any person refuse to pay the present overseers, the succeeding overseers may levy the arrears, and reimburse their predecessors."
254. By 17 G. 2. c. 38. § 12. "but persons succeeding tenants rated, or coming into houses empty at the time of the rate, shall only pay in proportion to the time they have occupied the premises; which proportion shall be settled by two justices."
255. By 27 G. 2. c. 30. "the justices granting such warrant of distress, shall therein order and direct the goods and chattels so to be distrained, to be sold and disposed of within a certain time, to be limited in such warrant; so as such time be not less than *four days*, nor more than *eight days*; unless the penalty or sum of money for which such distress shall be

made, together with the reasonable charges of taking and keeping such distress be sooner paid."

256. By 27 G. 2. c. 20. "the officer making such distress may deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising from the sale, and also the penalty or sum distrained for."

257. By 27 G. 2. c. 20. "the officer executing such warrant shall, if required, show the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken."

258. By 28 G. 3. c. 49. "justices acting for adjoining counties, and personally resident in one of them, may grant warrants of distress; and the acts of any constable or other officer in obedience thereto shall be as valid as if they had been granted by justices acting for the proper county only; but such warrants, &c., must be directed and given, in the first instance, to the constable or other officer of the county to which the same particularly related, and such constable, &c., may take persons apprehended, &c., before the justices in the adjoining county."

259. By 28 G. 3. c. 49. § 2. Constables, &c., may carry offenders before justices acting for the county, and resident in the adjacent county, &c.

260. By 28 G. 3. c. 49. § 3. "Sheriffs, &c., may convey offenders through adjoining counties to the goal of the county where the offence was committed."

261. And by 33 G. 3. c. 55. "where sufficient distress cannot be found within the jurisdiction of the justice who granted the warrant, it may, on being backed in the manner described in the act, be executed in another county."

262. And it seems that such a warrant was good before the making of this act, for where a warrant was directed to the constable of A. to levy a poor's rate of a person who had lands in A. but lived in B., a levy of the rate in B. was held good, *Hampton v. Lammas*, i. pl. 268.

263. By 41 G. 3. c. 23. § 1. "which authorises the sessions to amend a poor's rate, or to quash it, the sum assessed shall be levied, though the rate be quashed; and carried to the credit of the next effective rate."

264. By 41 G. 3. c. 23. § 2. "notice of appeal shall not prevent distress being made for the recovery of the rate, provided the sum be not greater than that assessed in the last effective rate."

265. By 41 G. 3. c. 23. § 3. the "quarter sessions may order the sum charged not to

be paid, and stop proceedings for the recovery of it," &c.

266. By 41 G. 3. c. 23. § 7. "the rate as altered by the sessions may be recovered in the same way as the original rate."

267. By 41 G. 3. c. 23. § 8. "if the rate be altered, or the name of any person rated be struck out, the sessions shall order the money recovered to be repaid."

268. Distress for poor's rate, &c., if not to be found within the district, &c., may be made out of district, 54 G. 3. c. 170. § 12.

269. A POOR'S RATE cannot be distrained for before it is demanded, and the payment thereof refused; but by Holt, *Chief Justice*, the practice in these cases having been to grant a conditional warrant to distrain, *communis error facit jus*, *East India Company v. Skinner*, i. pl. 260.

270. If there be a defect in the rate from irregularity, and it is not appealed from, it will not render the warrant of distress void, so as to make the officer a trespasser *ab initio*, *Hutchins v. Chambers*, i. pl. 264.

271. For if the rate be objectionable the party aggrieved must appeal, *Durrant v. Boys*, i. pl. 270.

272. But if the rate be not published in the church the next Sunday after it is allowed, it is a mere nullity, and payment cannot be enforced, though there be no appeal to the sessions, *R. v. Newcomb*, i. pl. 268.

273. And in one case a *mandamus* was directed to the justices to sign a warrant of distress, although it appeared that the party had not been summoned to show cause why he had not paid the rate, and that the justices had on that account refused to grant the warrant, *R. v. Justices of Middlesex*, i. pl. 262.

274. But where the person rated died intestate, and two justices issued a warrant of distress against his administrator, reciting that the rate had been lawfully demanded of the intestate, and of his widow and representative, since his decease, the Court held that a distress made by virtue of this warrant of the cattle of the deceased in the hands of his administrator, was not legal; and that if the distress could in such case be made, the administrator ought to have been summoned, *Stevens v. Evans*, i. pl. 265.

275. And it seems now to be settled that before a warrant of distress can legally issue to levy a poor's rate, the party must be summoned and heard, *R. v. Benn*, i. pl. 269.

276. And that the Court will only grant a *mandamus* to receive such information and complaint as have been or shall be duly laid before them against such persons as

- have neglected or refused, or shall neglect or refuse to pay the sums assessed, *R. v. Benn*, i. pl. 269.
277. For the granting a warrant of distress is a judicial act in the justices; and they must of course *summon* the party, and exercise a discretion after inquiring into all the circumstances of the case, *Harper v. Carr*, i. pl. 271.
278. A writ of *mandamus* to a corporation, commanding them to pay a poor's rate, omitted to state that the defendants had no effects upon which a distress could be levied: Held, that this was a fatal objection to the writ; and might be taken after the return, or at any time before the issuing of the peremptory *mandamus*, *R. v. Margate Pier Company*, i. pl. 273.
- Quare*, Whether in such a case a *mandamus* will lie, *Id. ibid.*
279. A distress cannot be made under a general warrant made before the rate, *Tracy v. Talbot*, i. pl. 259.
280. But a warrant of distress may be made before the time for which the rate is made, is expired, *Charlewood v. Best*, i. pl. 261.
281. At common law the goods taken by distress were considered in the nature of a *pledge*, and not being to be sold, the law protected the tools of a man's trade, his wearing apparel, and all other articles which were necessary to enable him to earn the money for which the goods were taken; but in a distress under all those statutes which allow the goods to be sold, such articles are not protected, *Edgcomb v. Sparks*, i. pl. 256.
282. Therefore the daily wearing apparel of the wife and children of the person rated may be taken, while the owners are in bed, *Caldwell v. Taylor*, i. pl. 256 n.
283. So *averia carucae*, or beasts of the plough, may be taken in distress for a poor's rate, although there are other distrainable goods, of sufficient value on the premises at the time, *Hutchin v. Chambers*, i. pl. 264, *text.*
284. Therefore the working tools of a cooper, lying in his shop for the purpose of carrying on his trade, are distrainable for the poor's rate under the 45 Eliz. c. 2. *Edgcomb v. Sparks*, i. pl. 256.
285. So also geldings, used by the party both for the plough and the cart, may be distrained for the poor's rate, *Hutchin v. Chambers*, i. pl. 264, *text.*
286. So also it is said, that a horse in a smith's shop, which was protected from distress by the common law, may be distrained for the poor's rate under the 45 Eliz. c. 2. or for any other personal duty, *Id. ibid.*
287. It has also been held, that money may be distrained as well as goods for non-payment of a poor's rate, *East India Company v. Skinner*, i. pl. 257.
288. Where the servant of an ambassador did not reside in his master's house, but rented and lived in another, part of which he let in lodgings: held that his goods in that house not being necessary for the convenience of the ambassador, were liable to be distrained for the poor's rate, *Novello v. Toogood*, i. pl. 274.
289. A second distress may be taken under the same warrant, although enough might have been taken on the first distress; but then he must have seized for the whole sum due, and mistaken the value of the goods; for where the duty is entire it cannot be split, and part of it distrained for at one time and part of it at another, *Hutchin v. Chambers*, i. pl. 264.
290. If the officers take an *excessive distress*, the party injured may have a special action on the statute of *Marlbridge*; but a general action of trespass will not lie, *Id. ibid.*
291. So also a distress for a poor's rate for lands not in the occupation of the party may be *replevied*, notwithstanding the sessions have confirmed the rate, *Milward v. Caffin*, i. pl. 266.
292. And in such an action of replevin the justice who granted the warrant need not be joined according to the directions of the statute 24 G. 2. c. 44.; for replevin is an action *in rem*, to which the statute has never been held to extend, *Id. ibid. text.*
293. Nor need the justices be joined in an action of *trespass* against the overseer, *Harper v. Car*, i. pl. 271.
294. And overseers are within the protection of the statute, *Nutting v. Jackson*, i. pl. 361.
295. And if a poor's rate be illegally made, and the justices, on the application of the overseer, grant a warrant of distress, and an action of *trespass* be brought, yet this is not like the case where the justice hath a general jurisdiction, and whose warrant the officer is implicitly bound to obey; but the justice in such case hath only a special jurisdiction upon the application of the overseer to enforce payment of the tax which he (the overseer) is presumed to have regularly made, *R. v. Coxens*, i. pl. 267.
296. But overseers cannot be guilty of *trespass* in levying a poor's rate by distress, although the rate is objectionable, if the party has not appealed to the sessions, *Durrant v. Boys*, i. pl. 270.
297. Where the landlord has always paid

the poor's rate, if a *landlord* tender the rate for the land in the occupation of his *tenant*, the overseers must receive it, and a warrant ought not to be granted to distress upon the *tenant*, *R. v. Cozens*,

i. pl. 267.

298. Overseers levying a poor's rate under a warrant of distress, may retain the necessary expences of the distress and sale out of the produce of the goods sold, *Moyse v. Cockledge*,

i. pl. 263.

299. Any person aggrieved by a distress under poor's rate may appeal to the next sessions, 17 G. 2. c. 38. § 7.

300. The plaintiff's goods were distrained for poor's rate, and upon the sale produced 4*l.* 7*s.* more than was necessary to satisfy the levy. The defendants tendered to him 3*l.* 14*s.* which he refused to accept, saying that it was too late, but did not then or at any other time, demand a settlement of the account and the payment of the overplus: held that the 27 G. 2. c. 20. prevented the plaintiff from recovering without making a demand before the commencement of the action, and that the tender did not make such demand unnecessary, *Simpson v. Routh*,

i. pl. 275.

See "APPEAL against poor's rate" for the time and manner of appeal.

IX.

Jurisdiction of the Sessions respecting the Poor's Rate.

301. By 43 Eliz. c. 2. § 4. "persons grieved by a poor's rate may apply to the justices in their general quarter sessions, who shall make such order therein as to them shall be thought convenient, and the same shall conclude and bind all the parties."

302. And magistrates of corporations shall in this respect have the same power as justices of counties.

303. Where corporation justices consist of a greater number than four, an appeal lies to them at sessions against a poor's rate, although there be less than four who are devoid of interest in the question, *R. v. Justices of Essex*,

i. pl. 302.

304. But by 9 G. 1. c. 7. § 5. and 28 G. 3. c. 49. justices for counties shall not hold their sessions in cities or towns which are counties of themselves, &c.

305. By 17 G. 2. c. 38. § 4. "persons who find themselves aggrieved by any rate made for the relief of the poor, or who shall have any material objection to any person or persons being put on or left out of such rate; or to the sum charged on any person or persons therein; may, on giving reasonable notice to the overseers,

appeal to the next general or quarter sessions of the county or place where the parish lies; but if it shall appear that reasonable notice was not given, the sessions shall adjourn the appeal to the next quarter sessions, and may order the party for whom such appeal shall be then determined reasonable costs."

306. By 17 G. 2. c. 38. § 5. "persons resident in corporations who have not four justices, may appeal against a poor's rate to the next sessions of the county."

307. The appeal against a poor's rate must be in *all* cases to the next sessions; for 17 G. 2. has repealed 43 Eliz., which left the appeal to *any* sessions, *R. v. Coode*,

i. pl. 290.

That is to the next sessions after the publication of the rate, *R. v. Micklefield*,

i. pl. 291.

308. By 17 G. 2. c. 38. § 6. "upon all appeals from poor's rates, the sessions were to *amend* the rate in such manner as to give relief, without altering the rates with respect to other persons; but this is now altered by the statute 41 G. 3. c. 23. *quod vide infra*."

309. By 17 G. 2. c. 38. § 7. persons aggrieved by warrant of distress may appeal to the next sessions.

310. By 5 G. 2. c. 19. "the justices in sessions shall cause defect of form in every appeal against judgments or orders to be rectified and amended without any costs or charges to the parties concerned, and after such amendment shall proceed to determine the same on the truth and merits of the case, and shall examine all witnesses upon oath, and hear all other proofs relating thereto."

311. By 17 G. 2. c. 38. § 13. "the overseer's book, in which all appeals from poor's rates are directed to be entered, shall be produced at sessions when any appeal is to be heard."

312. By 41 G. 5. c. 23. § 1. the sessions, on appeal, may either amend the rate, by inserting or striking out a name, or by altering the sum, or in any other manner necessary for giving relief, without quashing or wholly setting the rate aside, or may, if necessary, wholly quash the rate.

313. By 41 G. 3. c. 23. § 3. if the sessions quash the rate, they may order the sum charged not to be paid.

314. By 41 G. 3. c. 23. § 4. the notice of appeal must be in writing, and signed by the person giving it or by his attorney, and the causes of appeal be specified therein; and the sessions shall not examine into any other causes than are specified therein.

315. By 43 G. 5. c. 23. § 5. But if the parties

- consent, the appeal may be heard though no notice has been given.
316. By 43 G. 3. c. 23. § 6. the appellant shall give notice, not only to the parish officers, but also to the person interested or concerned in the event of the appeal.
317. By 43 G. 3. c. 23. § 8. if a name be struck out, or a sum lowered, the session shall order any money previously paid on account of the original rate, to be repaid with reasonable costs.
318. The sessions have no authority to make a poor's rate; for they have only an appellate and not an original jurisdiction on this subject; and therefore, although upon quashing a whole rate, they may order the overseers to make a new and equal rate, yet if they direct them by an original order to assess certain lands by name, and all other lands in the district equally by a pound-rate, such order is bad, *R. v. Aberford East*, i. pl. 278.
319. And as the sessions have not an original jurisdiction, an order directing a new rate must show upon the face of it that it was on an appeal, *Garrett v. Foot*, i. pl. 276.
320. And therefore where a standing rate had been established in the parish for upwards of twenty years, and a new rate was made, which was appealed against, and the sessions quashed the new rate, and ordered the old rate to be continued, the order was held bad, for the sessions had no authority to make an original rate, *R. v. Audley*, i. pl. 279.
321. If the sessions quash a rate, upon the appeal of several inhabitants, because personal property is not rated, and the overseer in the new rate tax the real estate ten times more in proportion to the personal, the sessions may quash the whole rate, *R. v. Shoreditch*, i. pl. 277.
322. Nor can the sessions make an equal rate, for it is within the jurisdiction of the justices of peace to judge whether a rate be equal, or whether proper persons be put into it, *R. v. Canterbury*, i. pl. 286.
323. And therefore if a rate be unequal, or if persons are omitted who ought to be inserted, it is matter of appeal, *Id. Ibid.*
324. But if the rate be made upon houses and lands upon an erroneous principle with respect to the proportion in which each should be rated, the sessions cannot amend, but must quash the whole rate, *R. v. Sandwich*, i. pl. 128.
325. On an appeal against a rate on the ground, that A. is not rated for his stock in trade, the sessions ought to amend the rate and not quash it, *R. v. Ambleside*, i. pl. 250.
326. The notice of appeal given to the overseers ought to specify the names of the persons alleged to be left out, and show that they are liable to be rated, *R. v. Justices of Berkshire*, i. pl. 284.
327. If a person be rated for some woodlands which he owns and occupies, and on appeal, the sessions find it as a fact that the said woodlands consist of timber trees, they may strike out such assessment from the rate, and the court of king's bench will not vacate the order, although it appear that the woodlands consisted of beech trees, which are not timber, except by the custom of the county, *R. v. Minchinhampton*, i. pl. 285.
328. The persons whose names are omitted in a rate must have notice and be heard on the appeal before the rate is amended, by inserting their names; for if, upon the removal of an order of sessions adjudging that certain persons ought to be added to a poor's rate, and ordering the rate to be amended accordingly, the sessions omit to state that such persons had notice or appeared, and were bound on the appeal, it is fatal, *R. v. Andover*, i. pl. 287.
329. But where a person is overcharged in a poor's rate, the sessions may, under the 17 G. 2. c. 18. relieve him on appeal, by lessening the sum assessed, on him, *R. v. Chessnut*, i. pl. 292.
330. On an appeal against a poor's rate on the ground that he has no rateable property in the parish, the respondents must first establish their case, *R. v. Newbury*, i. pl. 296.
331. An appeal against a poor's rate on the ground that the appellant was overrated, the practice at the sessions requiring the appellant to begin by proving his case, which the appellant refusing to do the appeal was dismissed; the court refused a mandamus to the sessions to re-hear the appeal on this objection, *R. v. Justices of Suffolk*, i. pl. 303.
332. The justices at sessions on stating a case on an appeal from a poor's rate cannot permit a material fact to be omitted in order to bring a general question before the court, though the counsel on each side consent to it, *R. v. Hull*, i. pl. 269.
333. The sessions confirming a rate on one ground will not render it valid, if it be radically bad on another, *R. v. Newcomb*, i. pl. 294.
334. The sessions on appeal for not rating personal property, must be satisfied that the property belongs to the person intended to be rated, and that it is productive of profit, before they can quash the rate, *R. v. Dursley*, i. pl. 296.
335. If a person give notice of appeal to the

quarter sessions against a poor's rate, but do not enter his appeal, the sessions cannot award costs to the other party under 17 G. 2. c. 38. *R. v. Justices of Essex.*

336. By a local act, the management of the poor of a town was vested in certain persons who were empowered to make rates, and an appeal was given to the party aggrieved to the town sessions against every such rate, and a further appeal if required to the county sessions. An appeal against four rates being entered at the January town sessions four grounds of appeal were specified in the notice; the party being dissatisfied, made a further appeal to the county sessions, and two other grounds of appeal were added, the fourth being that the party was rated in respect of his lands in a higher proportion than all the other inhabitants mentioned in the rate; Held, first, that an appeal against the four rates was sufficient; secondly, that it was not necessary to give notice of appeal to all the inhabitants named in the rate; and, thirdly, that the appellant at the county sessions must be confined to the original grounds of appeal at the town sessions, *R. v. Justices of Suffolk*,
i. pl. 304.

337. In what cases and how the proceedings on a poor's rate may be removed by certiorari. (See CERTIORARI.)

PROTESTANT.

See OVERSEERS — MAINTENANCE OF RELATIONS.

PRISON.

A prisoner in the Fleet who rents a house of 10*l.* a year within the rules, thereby gains a settlement, *St. Margaret's v. St. Martin's*,
ii. pl. 127.

Q.

QUAKERS.

1. By 26 G. 2. c. 33. s. 18. "nothing in the marriage-act contained shall extend to any marriages amongst the people called Quakers."

2. The trustees of a Quaker's meeting-house, of which no profit is made by the pews, &c., are not rateable to the poor, *R. v. Woodward*,
i. pl. 200.

QUARANTINE.

1. A widow by residence during her quarantine, gains a settlement for herself and

children, who are not emancipated, although they do not reside with her during the quarantine, by reason of occasional separation, *R. v. Long Wittenham*,
ii. pl. 55.

2. So also the widow of a man who dies seized of a house gains a settlement by a residence of forty days in right of her dower, *R. v. Painswicke*
ii. pl. 627.

R.

RABBITS.

1. Renting a rabbit warren, though the party taking it have no interest in the soil, except that of entering the warren to kill the rabbits, is renting a tenement within the statute Car. 2., *R. v. Paddlesanthide*,
ii. pl. 137.

2. See also *Kinver v. Stone*,
ii. pl. 126.

RATING IN AID.

I. The Statutes.

II. The Form of the Rate.

III. Parishes in the Hundred.

IV. Parishes in the County.

V. Places liable to be taxed.

I.

Of the Statutes.

1. By 43 Eliz. c. 2. § 5. "if in the judgment of two justices any parish is unable to maintain its own poor, they may rate any other of other parishes, or out of any parish within the hundred in which the poor parish lies, towards the maintenance of the poor of such poor parish."

2. By 43 Eliz. c. 2. § 3. "if the hundred is unable, then the general quarter sessions may rate any other of other parishes, or out of any parish within the county in which the poor parish lies, towards the maintenance of the poor of such poor parish."

II.

The Form of the Rate.

3. The order rating in aid need only describe the parishes generally, and not the particular persons assessed, for the justices are only to assess the quantum, and then the rate is to be made by the overseers of the poor parish, *R. v. St. Rumbald's*,
i. pl. 397.

4. The justices may tax particular persons in aid of that parish which cannot relieve its own poor, or they may assess the whole parish in a certain sum, and leave it to

185. The burgesses of *Nottingham*, and the occupiers of ancient messuages there, had as such, for a certain portion of the year, a right to turn cattle into certain fields, and to exclude during that period the owner of the soil: held, that this was a mere right of common, and not rateable to the relief of the poor, *R. v. Churchill and Booth*, i. pl. 251.
186. An act of parliament having vested the after-math of a certain meadow in trustees upon certain trusts, with power to let the said after-math in *pastures*, for horses, &c. or to demise the same for a term of years: held, that the trustees having let out the after-math in *pastures* (as it was called) at so much a head for horses, &c. to various persons for no certain term, and in no certain proportions, must themselves be taken to be the occupiers of the land, *R. v. Trustees of Tewkesbury*, i. pl. 228.
187. By an act of parliament the *Birmingham Gas Light and Coke Company* had power given them to supply the town of *B.* with gas, and to lay down pipes for the conveyance of gas from the manufactory to the houses of the consumers. Under this act the company purchased lands and buildings, and there placed retorts, &c. necessary for the manufacture of gas and coke, and fixed in the streets trunks, pipes, &c. for the conveyance of gas. The company derived a considerable profit from the manufacture and sale of coke and gas. The stock in trade and the profits of other manufactories within the parish of *B.* were not rated to the poor: held, that the company were not rateable to the amount of the profits of their trade, but for a sum equal in amount to that for which the premises would let to other persons willing to carry on the same business, *R. v. Birmingham Gas Light and Coke Company*, i. pl. 245.
188. By an act of parliament a company was established for the lighting the town of *B.* with gas, and they were authorized, with the consent of certain commissioners (appointed under another act of parliament passed for the lighting and paving the town of *B.*), to break the ground and lay their pipes in the streets of *B.* The company having so laid their pipes for the purpose of conveying the gas, were held to be rateable to the poor in respect of the land occupied by their pipes, and to the extent of the increased value of the land in consequence of its being used by them for the purpose of conveying the gas, *R. v. Brighton Gas Company*, i. pl. 252.
189. Where a corporation is seized in fee of lands which, by the custom, are annually meted out under the control of a leet jury, according to a certain stint, to such of the resident burgesses who choose to stock the same, they paying 9s. 4d. to each of the other burgesses who do not stock; the burgesses who so stock are *tenants in common* of the land so occupied by them, and, as such *occupiers*, are liable to be rated for the same to the poor, *R. v. Watson*, i. pl. 216.
190. So also where the persons belonging to an hospital, as at *Chelsea Hospital*, have separate and distinct apartments, in which they live as in houses of their own, they are occupiers of their respective manions, and rateable to the poor, *Ayr v. Smallpiece*, i. pl. 154. See *R. v. Terrott*, i. pl. 215.
191. So the servants of the king, occupying separately houses and land, are rateable to the poor, for it is immaterial whether they pay for them in *rent* or in *services*, *R. v. Matthews*, i. pl. 170.
192. But an officer of the Salt Office is not liable in respect of his salary, *R. v. Shalfeet*, i. pl. 160.
193. Nor are officers in the navy or merchants' service liable for their pay, *R. v. White*, i. pl. 199.
194. Nor the salaries of officers of the customs, or merchants' clerks, *R. v. White*, i. pl. 199.
195. A bishop is liable to be rated in respect to his *palace*; for there can be no prescription against this tax, *R. v. Chichester*, i. pl. 141.
196. The site of a royal palace, granted for a permanent interest, is rateable to the poor, *Duke of Portland's case*, i. pl. 153.
197. But the royal palaces are not rateable to the poor, *R. v. Matthews*, i. pl. 170.
198. The ranger of a royal park is rateable, as such, to the poor, for inclosed lands in the park yielding certain profits; but not for the *herbage* and *pannage*, which yields no profit, *Lord Bute v. Grindall*, i. pl. 185.
199. And *qu.* Whether the *herbage* and *pannage* of a forest are rateable to the poor? *Jones v. Maunsell*, i. pl. 176.
200. Nor the heriots or other casualty to profits of a manor, *R. v. Vande-vall*, i. pl. 156.
201. But *ground rents* are rateable, *R. v. Gibbs*, i. pl. 142.
202. Woods consisting of *timber trees*, when the underwood is left for *standards*, are not rateable to the poor, *R. v. Muckin-Hampton*, i. pl. 158.
203. *Saleable underwoods* are rateable annually to the relief of the poor in proportion

- to their value, though they should happen not to be cut down more than once in 21 years. *R. v. Mirfield*, i. pl. 231.
204. Firs and larches planted with oaks for the purpose of sheltering the latter, and cut from time to time as the oaks grew larger and required more space, but when once cut, not growing again, and some of them yielding a profit by sale, are not mischievous underwoods within the 43 Eliz., the primary object of planting them being to protect the oaks, and not to derive a profit by them *per se* by sale, *R. v. Ferrybridge*, i. pl. 243.
205. *Stable*, that they are not underwood at all, *id. ibid.*
205. Houses, shops, and sheds, which render an annual revenue, are rateable to the poor, i. pl. 139.
206. If two several houses are inhabited by two families, they shall be rated separately, though the house has but one entrance, *Tracey v. Talbot*, i. pl. 144.
207. If the owner of a house occupy *part* of it, he shall be rated for the *whole*, unless there is a distinct occupation of the rest by some other person, *R. v. St. Mary the Less*, i. pl. 197.
208. One who went from home with his family for nearly a year, but left his assistant to carry on his business in his shop in one room of the house, which for this purpose was parted off by laths from the rest, and left the key of the house-door with a friend, and had the garden cultivated for his own benefit as usual, is liable to be rated to the relief of the poor as the occupier of the whole house, *R. v. Aberystwith*, i. pl. 224.
209. Chambers in an inn of court or chancery are not rateable, provided the inn be extra-parochial, *Mazon v. Horsenail*, i. pl. 153.
210. It seems that the pantheon, playhouse, and other places of public amusement, are rated, i. pl. 166.
211. A light-house seems rateable for the building only, *R. v. Reboue*, i. pl. 166.
212. The profits of a *weighing machine* house are rateable to the poor, *R. v. St. Nicholas, Gloucester*, i. pl. 180.
213. A house with a *carding machine* is rateable to the poor with respect to the profits of the machine, *R. v. J. Hog*, i. pl. 186.
214. Stables rented by the colonel of a regiment by order of the crown for the use of the regiment, are not rateable to the poor; for neither the possessions of the crown or of the public are liable, and the stables thus used must be considered as in the occupation of the public, *Lord Amherst v. Lord Somers*, i. pl. 188.
215. But where the sessions found that the master gunner at *Seaford* was the occupier of the battery-house, it was held that that fact fixed his liability to be rated, although the battery house is the property of the crown, and from whence he is removable at pleasure, *R. v. Hardis*, i. pl. 191.
216. And the owner of stables in the parish of *Marybone*, rented by a colonel of a troop of horse by the authority of the king, for the use of the troop, is liable to assessments under a private act, which provides that rates shall be paid on *public buildings* by the owner or proprietors; but the colonel cannot be considered as the occupier, on account of such stables being used for such public purposes by him, *Eckersall v. Briggs*, i. pl. 195.
217. So where the commanding officer in barracks had distinct apartments allotted him, one in particular for transacting the business of the regiment, and the other fitted up for the accommodation of himself and his family, who resided there with him, containing, among others, a kitchen wash-house, and coach-house, together with a stable, yard, and garden, it was held that he was rateable to the relief of the poor for the same; he having a beneficial enjoyment of them beyond his necessary accommodation as an officer for the purpose of public service, *R. v. Terrott*, i. pl. 213.
218. A canteen in barracks demised to *B.* by the barrack-board for a year, at a rent of 15*l.* for the canteen and buildings, and also the farther sum of 510*l.* for the privilege of using the same as a canteen, and selling therein provisions and liquors, &c., usually sold by sutlers, with power of distress for the aggregate sum, was held to be one entire rent for the canteen; and therefore *B.* was held rateable to the relief of the poor, as occupier of the canteen, in the respect of the 525*l.* aggregate rent, and not merely in respect of the 15*l.*, *R. v. Bradford*, i. pl. 235.
219. Houses built on land embarked from the Thames in pursuance of 7 G. 3. c. 37., are not liable to be assessed to the rates imposed by 11 G. 3. c. 29., *Eddington v. Borman*, i. pl. 194.
220. And an exemption in a private statute of lands given to charitable purposes "from all *public* taxes, charges, and assessments whatsoever, civil or military," has been held to extend to the *poor's rate*, *R. v. Scott*, i. pl. 193.
221. Lead mines, the lessees of which pay no rent, but only a certain part of the lead ore gotten thereout, are not liable in respect of the mines to be rated to the

- poor, *Smelting Lead Company v. Richardson*, i. pl. 159.
222. But the lessee of the crown of lead mines is rateable to the poor for the profits arising from *lot* and *cope*, which are duties paid to him by the adventurer, without any risk on his part, *Rowls v. Gells*, i. pl. 169.
223. So also a person entitled to *toll tin* and *farm dues*, which is a certain dish or measure arising out of tin bounds, viz. one *fifteenth* of all tin gotten in the bounds, and one *twelfth* thereof after the fifteenth is deducted, is liable to be rated to the poor in respect thereof, *R. v. St. Agnes*, i. pl. 192.
224. The trustees under the will of a person seised in fee of two-third parts of a manor, subject to certain leases to a company of adventurers, of the mines of lead, tin, and copper ore, and other minerals, under the moors, commons, or wastes of the manor, at a rent certain, are not rateable to the relief of the poor for such rent; and therefore a rate by which they were rated in one gross sum for such rent, and also in respect of their being owners and occupiers of the moors, commons, and wastes within the manor, was held ill, *R. v. Welbank*, i. pl. 234.
225. Where a rate was imposed upon *P.*, owner of the lead ore in certain lead mines, in respect of the duty lead reserved in a lease of said mines, being one-fifth share of the lead to be smelted from the ore raised from said mines. Held, that this reservation was in the nature of a rent, and therefore not rateable, *R. v. Earl of Pomfret*, i. pl. 236.
226. The lessees under the lord of the manor, of lot and free share of all calamine raised within the manor, are liable to be rated to the poor as occupiers of land in the parish where the manor lies, none of them being resident in the parish, *R. v. Baptist Mill Company*, i. pl. 232.
227. Where the owner of the soil by indenture granted to certain adventurers full and free liberty to dig, mine, and search for tin, tin ore, &c., and the same to take and convert to their own use, subject to a reservation therein contained, and to make such adits, shafts, &c., as they should think necessary, yielding and paying to him one full eighth share of all such tin, tin ore, &c., the same having been first spalled, picked, or otherwise made merchantable and fit to be smelted: and the indenture contained a power either for payment in ore or the amount thereof in money, which had been acted upon, and the owner had received it in money. Held, that for this, his one eighth share, he was liable to be rated as an occupier of land, the reservation operating as an exception out of the demise, and not being of the nature of a rent, *R. v. St. Austell*, i. pl. 242.
228. Clay-pits of which profit is made are rateable to the poor, *R. v. Brown*, i. pl. 220.
229. Landlords not resident within the parish, having leased lead mines and other minerals, with liberty to the tenants to dig, &c., reserving a certain annual rent, and also certain proportions of the ore which should be raised, are at any rate not assessable to the relief of the poor for such certain rent, no ore being raised, whatever the question might be as to the proportion of ore reserved when in fact any should be raised, *R. v. Bishop of Rochester*, i. pl. 227.
230. Lime works are rateable in the hands of the occupier, though there be risk and expence in the working, and the profits are uncertain, *R. v. Altherbury*, i. pl. 210.
231. A slate work, (or, as improperly called a slate mine) is rateable to the poor, *R. v. Woodland*, i. pl. 212.
232. But iron mines are not rateable to the relief of the poor; and if rated conjointly with coal mines, the coal whereof was raised by the owner of the lands for his own use, in smelting the iron, without ascertaining the proportion at which each was rated, the rate is bad, *R. v. Cuningham*, i. pl. 215.
233. Where the owner and occupier of an iron-stone mine erected an engine for the purpose of draining the water from the mine, and used it for no other purpose: Held, that he was not rateable to the poor in respect of the engine, *R. v. Bilton*, i. pl. 255.
234. The lessee of a coal-mine is liable to be rated to the poor, although he make no profit of the mine, *R. v. Parrott*, i. pl. 202.
235. Where a coal-mine, becoming unproductive, ceases to be worked, the lessee is no longer liable to be rated for it to the relief of the poor, although he be still bound by his covenant to pay the rent reserved to his landlord. After where the mine is itself productive, although it be worked to a loss by the lessee, after deducting the proportion of the gross value of the produce reserved to the owner, *R. v. Bedworth*, i. pl. 218.
236. The lessee of coal mines is rateable for the amount of royalty or rent which he pays, and in neither case is any allowance

to be made for money expended in rendering the mines productive. *R. v. Attwood*,
Addend.

227. The owner and occupier of coal mines is rateable to the poor at the sum for which the owner would let, subject to outgoings, *R. v. Attwood*, Addend.

228. The warden of THE FLEET is liable to the poor's rate for the profits of his office, *R. v. Eyles*, i. pl. 183.

229. If A. has an exclusive right of using a way-leave over land, which he holds in common with B., paying B. a certain sum yearly, and has the privilege of using a way-leave occupied by C. paying him so much per ton for the goods carried over it; A. is not liable to be rated in relief of the poor in respect of either such way-leave, *R. v. Jolliffe*, i. pl. 187.

230. But the occupier of land on which a way-leave is erected for the purpose of carrying coals, is rateable for the same to the poor, whether his title to it be good or bad, *R. v. Bell*, i. pl. 209.

231. Land of which the annual value is improved by a spring rising within it may be rated to the poor at such improved value, although the owners of that land, who are also occupiers, do not receive any of the profits derived from the said spring, nor does any part become due in the parish where the land lies, *R. v. New River Company*, i. pl. 231.

232. Where a company were empowered by act of parliament to lay under ground, through the streets of a town, main pipes for the conveyance of water, and the inhabitants, with the company's consent, to lay pipes communicating with such main pipes to their houses, paying to the company a rate for such privilege; held, that the company were rateable to the poor in the parish where the main pipes lay in respect of those pipes, and the rates paid thereon, *R. v. Rochdale Waterworks*, i. pl. 105.

233. As to the rateability of the London Dock Company, *R. v. St. George, Middlesex*, i. pl. 222.

234. The Hull Dock Company were held rateable in respect of the tonnage duties received by virtue of the statute 14 G. 3. c. 56, although it appeared that the expenditure in repairs during the period for which the rate was made exceeded the amount of the duties received, *R. v. Hull Dock Company*, i. pl. 238.

235. Where a canal was made under the 16 G. 3. c. 38. which contained no clause as to the mode of charging it to the parochial rates, and another canal was made under the 23 G. 3. c. 92., and was therein

directed to be rated in a special manner, and these two canals were incorporated by the 24 G. 3. by which it was provided that all the clauses, powers, provisions, restrictions, exemptions, &c., contained in each of the two former acts should still remain distinct from each other, and afterwards by 58 G. 3. c. 19., reciting that it was expedient to extend one system of management to the whole canal, it was enacted, "that all the canals, &c. so made as aforesaid under the former acts or any of them, should be deemed part, parcel, and member of the Birmingham Canal Navigation, and be considered as included and governed by all the clauses, &c., in the 23 & 24 G. 3., (save and except so much thereof as related to the exemption from stamp-duties on the quantum of tolls to be collected,) as if the same had been described in the 23 G. 3. as part of the works to be made and done under and by virtue of that act." It was held that this provision only incorporated these canals, &c., for the purpose of management, and that it did not authorize the canal originally made under the 8 G. 3. to be rated to the parochial taxes in the special manner pointed out by the 23 G. 3., *R. v. Birmingham Canal Company*, i. pl. 241.

246. By an act for clearing, lighting, watching, and regulating the streets of a township, the commissioners were authorized to ascertain the sum to be raised by rates or assessments on the several inhabitants of the township, and to raise such sums from time to time by rate or assessment upon the tenants and occupiers of all messuages, houses, warehouses, shops, cellars, vaults, stables, coach-houses, brew-houses, and other buildings, gardens, or garden-grounds, and other tenements in the township; by another clause, the occupier of any messuage, dwelling-house, or warehouse, or other building, or of any other tenement of the yearly value of 30*l.* within the township, was appointed a commissioner. Held, that under this act the trunks and pipes, works, and other apparatus of a water company for the supply of the town with water, did not constitute a tenement within the meaning of the act, and therefore the company were not liable to be rated in respect of such property, *R. v. Manchester and Salford Waterworks*, i. pl. 247.

247. By a statute of the 9 & 10 W. 3. the poor of the town of Kingston-upon-Hull are placed under the management of a corporation established by that act, and are to be maintained by money to be levied "by taxation of every inhabitant,

and of all lands, houses, tithes impropriate, appropriation of tithes, and all stocks and estates in the said town in equal proportions, according to their respective worths and values." Upon an appeal against a rate made by virtue of this act, it appeared that it omitted, first, persons not resident in *Hull* but having stock in trade there, which had produced a specified profit in the last year; secondly, a tenant of houses which he underlet at a specified profit, the under-tenants being rated but excused from paying on account of poverty; thirdly, owners and part owners of ships registered at *Hull* and trading to and from that port, and within the port at the time the rate was made. Some of these persons were resident in *Hull*, others were not. Some profits had been derived from the ships in the preceding year, but the appellants could not show the amount. Held, that the act in question made all personal property rateable whether the owner were or were not resident in *Hull*, and that consequently the first and third classes of persons ought to have been included in the rate, and that it was not incumbent on the appellants to show the amount of the profits made by the ships, for that it being established they were profitable, they ought not to have been altogether omitted; secondly, that the tenant of houses underlet as before mentioned, was not liable to be rated. The *Hull Dock Company* were rated at the full amount of their profits without first making any deduction for the poor's rate. Held that this was wrong, that the "worth and value" could only be the profits, *minus* the outgoings, and that therefore supposing other property to be rated at a rack-rent, the poor's rate should have been calculated upon such a sum as would together with the rate make up the whole amount of profits, *R. v. Hull Dock Company*, i. pl. 249.

248. The proprietors of certain lime-stone quarries agreed to deliver to a canal company yearly such quantities of good lime-stone as the canal company should direct, at the rate of 7d. *per* ton, and if they should at any time neglect to deliver the quantities required, it should be lawful for the company to enter into or upon the lands or lime-stone quarries of any of the proprietors, and to take such quantities of lime-stone as they should think proper, paying 2d. *per* ton. The proprietors of the lime-stone quarries having failed to supply the lime-stone required, the company entered and continued for more than

20 years to work the quarries and take the lime-stone at 2d. *per* ton. Held, however, that the company had not any exclusive occupation, but a mere privilege, and consequently that they were not liable to be rated to the poor, *R. v. Trent and Mersey Navigation*, i. pl. 250.

VIII.

Of levying the Poor's Rate.

249. By 43 Eliz. c. 2. § 4. "the present as well as the subsequent overseers may, by warrant from two justices, levy the sums of money assessed for the poor's rate, and all arrears thereof, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale of the offender's goods, rendering to the parties the overplus; and in defect of such distress, two justices may commit the defaulter until payment."
250. By 43 Eliz. c. 2. § 8. "the warrant of distress may be granted as well by city magistrates as by county justices."
251. By 16 G. 2. c. 18. "although the distress has relation to taxes to which they are chargeable."
252. By 17 G. 2. c. 38. § 7. "the goods of any person assessed and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found in such county or precinct, on oath thereof made before some justice of any other county or precinct (which oath shall be certified), such goods may be levied in such other county or precinct."
253. By 17 G. 2. c. 38. § 11. "in case any person refuse to pay the present overseers, the succeeding overseers may levy the arrears, and reimburse their predecessors."
254. By 17 G. 2. c. 38. § 12. "but persons succeeding tenants rated, or coming into houses empty at the time of the rate, shall only pay in proportion to the time they have occupied the premises; which proportion shall be settled by two justices."
255. By 27 G. 2. c. 30. "the justices granting such warrant of distress, shall therein order and direct the goods and chattels so to be distrained, to be sold and disposed of within a certain time, to be limited in such warrant; so as such time be not less than *four days*, nor more than *eight days*; unless the penalty or sum of money for which such distress shall be

made, together with the reasonable charges of taking and keeping such distress be sooner paid."

256. By 27 G. 3. c. 20. "the officer making such distress may deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising from the sale, and also the penalty or sum distrained for."

257. By 27 G. 2. c. 20. "the officer executing such warrant shall, if required, show the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken."

258. By 28 G. 3. c. 49. "justices acting for adjoining counties, and personally resident in one of them, may grant warrants of distress; and the acts of any constable or other officer in obedience thereto shall be as valid as if they had been granted by justices acting for the proper county only; but such warrants, &c., must be directed and given, in the first instance, to the constable or other officer of the county to which the same particularly related, and such constable, &c., may take persons apprehended, &c., before the justices in the adjoining county."

259. By 28 G. 3. c. 49. § 2. Constables, &c., may carry offenders before justices acting for the county, and resident in the adjacent county, &c.

260. By 28 G. 3. c. 49. § 3. "Sheriffs, &c., may convey offenders through adjoining counties to the goal of the county where the offence was committed."

261. And by 33 G. 3. c. 55. "where sufficient distress cannot be found within the jurisdiction of the justice who granted the warrant, it may, on being backed in the manner described in the act, be executed in another county."

262. And it seems that such a warrant was good before the making of this act, for where a warrant was directed to the constable of A. to levy a poor's rate of a person who had lands in A. but lived in B., a levy of the rate in B. was held good, *Hampton v. Lammas*, i. pl. 258.

263. By 41 G. 3. c. 23. § 1. "which authorizes the sessions to amend a poor's rate, or to quash it, the sum assessed shall be levied, though the rate be quashed; and carried to the credit of the next effective rate."

264. By 41 G. 3. c. 23. § 2. "notice of appeal shall not prevent distress being made for the recovery of the rate, provided the sum be not greater than that assessed in the last effective rate."

265. By 41 G. 3. c. 23. § 3. the "quarter sessions may order the sum charged not to

be paid, and stop proceedings for the recovery of it," &c.

266. By 41 G. 3. c. 23. § 7. "the rate as altered by the sessions may be recovered in the same way as the original rate."

267. By 41 G. 3. c. 23. § 8. "if the rate be altered, or the name of any person rated be struck out, the sessions shall order the money recovered to be repaid."

268. Distress for poor's rate, &c., if not to be found within the district, &c., may be made out of district, 54 G. 3. c. 170. § 12.

269. A POOR'S RATE cannot be distrained for before it is demanded, and the payment thereof refused; but by Holt, *Chief Justice*, the practice in these cases having been to grant a conditional warrant to distrain, *communis error facit jus*, *East India Company v. Skinner*, i. pl. 260.

270. If there be a defect in the rate from irregularity, and it is not appealed from, it will not render the warrant of distress void, so as to make the officer a trespasser *ab initio*, *Hutchins v. Chambers*, i. pl. 284.

271. For if the rate be objectionable the party aggrieved must appeal, *Durrant v. Boys*, i. pl. 270.

272. But if the rate be not published in the church the next Sunday after it is allowed, it is a mere nullity, and payment cannot be enforced, though there be no appeal to the sessions, *R. v. Newcomb*, i. pl. 268.

273. And in one case a *mandamus* was directed to the justices to sign a warrant of distress, although it appeared that the party had not been summoned to show cause why he had not paid the rate, and that the justices had on that account refused to grant the warrant, *R. v. Justices of Middlesex*, i. pl. 262.

274. But where the person rated died intestate, and two justices issued a warrant of distress against his administrator, reciting that the rate had been lawfully demanded of the intestate, and of his widow and representative, since his decease, the Court held that a distress made by virtue of this warrant of the cattle of the deceased in the hands of his administrator, was not legal; and that if the distress could in such case be made, the administrator ought to have been summoned, *Stevens v. Evans*, i. pl. 265.

275. And it seems now to be settled that before a warrant of distress can legally issue to levy a poor's rate, the party must be summoned and heard, *R. v. Benn*, i. pl. 269.

276. And that the Court will only grant a *mandamus* to receive such information and complaint as have been or shall be duly laid before them against such persons as

- have neglected or refused, or shall neglect or refuse to pay the sums assessed, *R. v. Benn*, i. pl. 269.
277. For the granting a warrant of distress is a judicial act in the justices; and they must of course *summon* the party, and exercise a discretion after inquiring into all the circumstances of the case, *Harper v. Carr*, i. pl. 271.
278. A writ of *mandamus* to a corporation, commanding them to pay a poor's rate, omitted to state that the defendants had no effects upon which a distress could be levied: Held, that this was a fatal objection to the writ, and might be taken after the return, or at any time before the issuing of the peremptory *mandamus*, *R. v. Margate Pier Company*, i. pl. 273.
- Quere*, Whether in such a case a *mandamus* will lie, *Id. ibid.*
279. A distress cannot be made under a general warrant made before the rate, *Tracy v. Talbot*, i. pl. 259.
280. But a warrant of distress may be made before the time for which the rate is made, is expired, *Charlewood v. Best*, i. pl. 261.
281. At common law the goods taken by distress were considered in the nature of a *pledge*, and not being to be sold, the law protected the tools of a man's trade, his wearing apparel, and all other articles which were necessary to enable him to earn the money for which the goods were taken; but in a distress under all those statutes which allow the goods to be sold, such articles are not protected, *Edgcomb v. Sparks*, i. pl. 256.
282. Therefore the daily wearing apparel of the wife and children of the person rated may be taken, while the owners are in bed, *Caldwell v. Taylor*, i. pl. 256 n.
283. So *averia carucae*, or beasts of the plough, may be taken in distress for a poor's rate, although there are other distrainable goods, of sufficient value on the premises at the time, *Hutchin v. Chambers*, i. pl. 264, *text*.
284. Therefore the working tools of a cooper, lying in his shop for the purpose of carrying on his trade, are distrainable for the poor's rate under the 45 Eliz. c. 2. *Edgcomb v. Sparks*, i. pl. 256.
285. So also geldings, used by the party both for the plough and the cart, may be distrained for the poor's rate, *Hutchin v. Chambers*, i. pl. 264, *text*.
286. So also it is said, that a horse in a smith's shop, which was protected from distress by the common law, may be distrained for the poor's rate under the 45 Eliz. c. 2. or for any other personal duty, *Id. ibid.*
287. It has also been held, that *money* may be distrained as well as goods for non-payment of a poor's rate, *East India Company v. Skinner*, i. pl. 257.
288. Where the servant of an ambassador did not reside in his master's house, but rented and lived in another, part of which he let in lodgings: held that his goods in that house not being necessary for the convenience of the ambassador, were liable to be distrained for the poor's rate, *Novello v. Toogood*, i. pl. 274.
289. A second distress may be taken under the same warrant, although enough might have been taken on the first distress; but then he must have seized for the whole sum due, and mistaken the value of the goods; for where the duty is entire it cannot be split, and part of it distrained for at one time and part of it at another, *Hutchin v. Chambers*, i. pl. 264.
290. If the officers take an *excessive distress*, the party injured may have a special action on the statute of *Marlbridge*; but a general action of trespass will not lie, *Id. ibid.*
291. So also a distress for a poor's rate for lands not in the occupation of the party may be *replevied*, notwithstanding the sessions have confirmed the rate, *Milward v. Caffin*, i. pl. 266.
292. And in such an action of replevin the justice who granted the warrant need not be joined according to the directions of the statute 24 G. 2. c. 44.; for replevin is an action *in rem*, to which the statute has never been held to extend, *Id. ibid. text*.
293. Nor need the justices be joined in an action of *trespass* against the overseer, *Harper v. Car*, i. pl. 271.
294. And overseers are within the protection of the statute, *Nutting v. Jackson*, i. pl. 261.
295. And if a poor's rate be illegally made, and the justices, on the application of the overseer, grant a warrant of distress, and an action of *trespass* be brought, yet this is not like the case where the justice hath a general jurisdiction, and whose warrant the officer is implicitly bound to obey; but the justice in such case hath only a special jurisdiction upon the application of the overseer to enforce payment of the tax which he (the overseer) is presumed to have regularly made, *R. v. Cozens*, i. pl. 267.
296. But overseers cannot be guilty of *trespass* in levying a poor's rate by distress, although the rate is objectionable, if the party has not appealed to the sessions, *Darrent v. Boys*, i. pl. 270.
297. Where the landlord has always paid

the poor's rate, if a *landlord* tender the rate for the land in the occupation of his *tenant*, the overseers must receive it, and a warrant ought not to be granted to distrain upon the *tenant*, *R. v. Cozens*,

i. pl. 267.

296. Overseers levying a poor's rate under a warrant of distress, may retain the necessary expences of the distress and sale out of the produce of the goods sold,

i. pl. 263.

298. Any person aggrieved by a distress under poor's rate may appeal to the next sessions, 17 G. 2. c. 38. § 7.

300. The plaintiff's goods were distrained for poor's rate, and upon the sale produced 4l. 7s. more than was necessary to satisfy the levy. The defendants tendered to him 3l. 14s. which he refused to accept, saying that it was too late, but did not then or at any other time, demand a settlement of the account and the payment of the overplus: held that the 27 G. 2. c. 30. prevented the plaintiff from recovering without making a demand before the commencement of the action, and that the tender did not make such demand unnecessary, *Simpson v. Routh*, i. pl. 275.

See "APPEAL against poor's rate" for the time and manner of appeal.

IX.

Jurisdiction of the Sessions respecting the Poor's Rate.

301. By 43 Eliz. c. 2. § 4. "persons grieved by a poor's rate may apply to the justices in their general quarter sessions, who shall make such order therein as to them shall be thought convenient, and the same shall conclude and bind all the parties."

302. And magistrates of corporations shall in this respect have the same power as justices of counties.

303. Where corporation justices consist of a greater number than four, an appeal lies to them at sessions against a poor's rate, although there be less than four who are dissent of interest in the question, *R. v. Justices of Essex*, i. pl. 302.

304. But by 9 G. 1. c. 7. § 3. and 28 G. 3. c. 49. justices for counties shall not hold their sessions in cities or towns which are counties of themselves, &c.

305. By 17 G. 2. c. 38. § 4. "persons who find themselves aggrieved by any rate made for the relief of the poor, or who shall have any material objection to any person or persons being put on or left out of such rate; or to the sum charged on any person or persons therein; may, on giving reasonable notice to the overseers,

appeal to the next general or quarter sessions of the county or place where the parish lies; but if it shall appear that reasonable notice was not given, the sessions shall adjourn the appeal to the next quarter sessions, and may order the party for whom such appeal shall be then determined reasonable costs."

306. By 17 G. 2. c. 38. § 5. "persons resident in corporations who have not four justices, may appeal against a poor's rate to the next sessions of the county."

307. The appeal against a poor's rate must be in all cases to the next sessions; for 17 G. 2. has repealed 43 Eliz, which left the appeal to any sessions, *R. v. Coode*,

i. pl. 290.

That is to the next sessions after the publication of the rate, *R. v. Micklefield*,

i. pl. 291.

308. By 17 G. 2. c. 38. § 6. "upon all appeals from poor's rates, the sessions were to amend the rate in such manner as to give relief, without altering the rates with respect to other persons; but this is now altered by the statute 41 G. 3. c. 23. *quod vide infra*."

309. By 17 G. 2. c. 38. § 7. persons aggrieved by warrant of distress may appeal to the next sessions.

310. By 5 G. 2. c. 19. "the justices in sessions shall cause defect of form in every appeal against judgments or orders to be rectified and amended without any costs or charges to the parties concerned, and after such amendment shall proceed to determine the same on the truth and merits of the case, and shall examine all witnesses upon oath, and hear all other proofs relating thereto."

311. By 17 G. 2. c. 38. § 13. "the overseer's book, in which all appeals from poor's rates are directed to be entered, shall be produced at sessions when any appeal is to be heard."

312. By 41 G. 3. c. 23. § 1. the sessions, on appeal, may either amend the rate, by inserting or striking out a name, or by altering the sum, or in any other manner necessary for giving relief, without quashing or wholly setting the rate aside, or may, if necessary, wholly quash the rate.

313. By 41 G. 3. c. 23. § 5. if the sessions quash the rate, they may order the sum charged not to be paid.

314. By 41 G. 3. c. 23. § 4. the notice of appeal must be in writing, and signed by the person giving it or by his attorney, and the causes of appeal be specified therein; and the sessions shall not examine into any other causes than are specified therein.

315. By 43 G. 3. c. 23. § 5. But if the parties

- consent, the appeal may be heard though no notice has been given.
316. By 43 G. 3. c. 23. § 6. the appellant shall give notice, not only to the parish officers, but also to the person interested or concerned in the event of the appeal.
317. By 43 G. 3. c. 23. § 8. if a name be struck out, or a sum lowered, the session shall order any money previously paid on account of the original rate, to be repaid with reasonable costs.
318. The sessions have no authority to make a *poor's rate*; for they have only an *appellate* and not an *original* jurisdiction on this subject; and therefore, although upon quashing a whole rate, they may order the overseers to make a new and equal rate, yet if they direct them by an original order to assess certain lands by name, and all other lands in the district equally by a pound-rate, such order is bad, *R. v. Aberford East*, i. pl. 278.
319. And as the sessions have not an original jurisdiction, an order directing a new rate must show upon the face of it that it was on an appeal, *Garrett v. Foot*, i. pl. 276.
320. And therefore where a standing rate had been established in the parish for upwards of twenty years, and a new rate was made, which was appealed against, and the sessions quashed the new rate, and ordered the old rate to be continued, the order was held bad, for the sessions had no authority to make an original rate, *R. v. Audley*, i. pl. 279.
321. If the sessions quash a rate, upon the appeal of several inhabitants, because personal property is not rated, and the overseer in the new rate tax the real estate ten times more in proportion to the personal, the sessions may quash the *whole rate*, *R. v. Shoreditch*, i. pl. 277.
322. Nor can the sessions make an equal rate, for it is within the jurisdiction of the justices of peace to judge whether a rate be equal, or whether proper persons be put into it, *R. v. Canterbury*, i. pl. 286.
323. And therefore if a rate be unequal, or if persons are omitted who ought to be inserted, it is matter of appeal, *Id. Ibid.*
324. But if the rate be made upon houses and lands upon an erroneous principle with respect to the proportion in which each should be rated, the sessions cannot amend, but must quash the whole rate, *R. v. Sandwich*, i. pl. 128.
325. On an appeal against a rate on the ground, that *A.* is not rated for his stock in trade, the sessions ought to amend the rate and not quash it, *R. v. Ambleside*, i. pl. 230.
326. The notice of appeal given to the overseers ought to specify the names of the persons alleged to be left out, and show that they are liable to be rated, *R. v. Justices of Berkshire*, i. pl. 284.
327. If a person be rated for some *woodlands* which he owns and occupies, and on appeal, the sessions find it as a fact that the said woodlands consist of *timber trees*, they may strike out such assessment from the rate, and the court of king's bench will not vacate the order, although it appear that the woodlands consisted of *beech trees*, which are not *timber*, except by the custom of the county, *R. v. Minchinhampton*, i. pl. 285.
328. The persons whose names are omitted in a rate must have notice and be heard on the appeal before the rate is amended, by inserting their names; for if, upon the removal of an order of sessions adjudging that certain persons ought to be added to a poor's rate, and ordering the rate to be amended accordingly, the sessions omit to state that such persons had notice or appeared, and were bound on the appeal, it is fatal, *R. v. Andover*, i. pl. 287.
329. But where a person is *overcharged* in a poor's rate, the sessions may, under the 17 G. 3. c. 18. relieve him on appeal, by lessening the sum assessed, on him, *R. v. Cheshunt*, i. pl. 289.
330. On an appeal against a poor's rate on the ground that he has no rateable property in the parish, the respondents must first establish their case, *R. v. Newbury*, i. pl. 294.
331. An appeal against a poor's rate on the ground that the appellant was overrated, the practice at the sessions requiring the appellant to begin by proving his case, which the appellant refusing to do the appeal was dismissed; the court refused a mandamus to the sessions to re-hear the appeal on this objection, *R. v. Justices of Suffolk*, i. pl. 308.
332. The justices at sessions on stating a case on an appeal from a poor's rate cannot permit a material fact to be omitted in order to bring a general question before the court, though the counsel on each side consent to it, *R. v. Hull*, i. pl. 286.
333. The sessions confirming a rate on one ground will not render it valid, if it be radically bad on another, *R. v. Newcom*, i. pl. 294.
334. The sessions on appeal for not rating personal property, must be satisfied that the property belongs to the person intended to be rated, and that it is productive of profit, before they can quash the rate, *R. v. Dursley*, i. pl. 299.
335. If a person give notice of appeal to the

quarter sessions against a poor's rate, but do not enter his appeal, the sessions cannot award costs to the other party under 17 G. 2. c. 38. *R. v. Justices of Essex.*

335. By a local act, the management of the poor of a town was vested in certain persons who were empowered to make rates, and an appeal was given to the party aggrieved to the town sessions against every such rate, and a further appeal if required to the county sessions. An appeal against four rates being entered at the January town sessions four grounds of appeal were specified in the notice; the party being dissatisfied, made a further appeal to the county sessions, and two other grounds of appeal were added, the fourth being that the party was rated in respect of his lands in a higher proportion than all the other inhabitants mentioned in the rate; Held, first, that an appeal against the four rates was sufficient; secondly, that it was not necessary to give notice of appeal to all the inhabitants named in the rate; and, thirdly, that the appellant at the county sessions must be confined to the original grounds of appeal at the town sessions, *R. v. Justices of Suffolk*,
i. pl. 304.

337. In what cases and how the proceedings on a poor's rate may be removed by certiorari. (See CERTIORARI.)

PROTESTANT.

See OVERSEERS — MAINTENANCE OF RELATIONS.

PRISON.

A prisoner in the Fleet who rents a house of 10l. a year within the rules, thereby gains a settlement, *St. Margaret's v. St. Martin's*,
ii. pl. 127.

Q.

QUAKERS.

1. By 26 G. 2. c. 33. s. 18. "nothing in the marriage-act contained shall extend to any marriages amongst the people called Quakers."
2. The trustees of a Quaker's meeting-house, of which no profit is made by the pews, &c., are not rateable to the poor, *R. v. Woodward*,
i. pl. 200.

QUARANTINE.

1. A widow by residence during her quarantine, gains a settlement for herself and

children, who are not emancipated, although they do not reside with her during the quarantine, by reason of occasional separation, *R. v. Long Wittenham*,
ii. pl. 55.

2. So also the widow of a man who dies seized of a house gains a settlement by a residence of forty days in right of her dower, *R. v. Painswicke*
ii. pl. 627.

R.

RABBITS.

1. Renting a rabbit warren, though the party taking it have no interest in the soil, except that of entering the warren to kill the rabbits, is renting a tenement within the statute Car. 2., *R. v. Puddlesanthide*,
ii. pl. 187.
2. See also *Kinner v. Stone*,
ii. pl. 126.

RATING IN AID.

- I. *The Statutes.*
- II. *The Form of the Rate.*
- III. *Parishes in the Hundred.*
- IV. *Parishes in the County.*
- V. *Places liable to be taxed.*

I.

Of the Statutes.

1. By 43 Eliz. c. 2. § 5. "if in the judgment of two justices any parish is unable to maintain its own poor, they may rate any other of other parishes, or out of any parish within the hundred in which the poor parish lies, towards the maintenance of the poor of such poor parish."
2. By 43 Eliz. c. 2. § 3. "if the hundred is unable, then the general quarter sessions may rate any other of other parishes, or out of any parish within the county in which the poor parish lies, towards the maintenance of the poor of such poor parish."

II.

The Form of the Rate.

3. The order rating in aid need only describe the parishes generally, and not the particular persons assessed, for the justices are only to assess the quantum, and then the rate is to be made by the overseers of the poor parish, *R. v. St. Rumbald's*,
i. pl. 397.
4. The justices may tax particular persons in aid of that parish which cannot relieve its own poor, or they may assess the whole parish in a certain sum, and leave it to

- the overseer to levy it on the individuals, *R. v. Eastchurch*, i. pl. 410.
5. The order must show that the assessment was made by the justices; for they cannot delegate their authority, and an order therefore was quashed, because the justices had referred their power of assessing and rating their parishioners to the churchwardens and the overseers; whereas by 43 Eliz. c. 2. they are to make the rate on all, or on particular persons, *R. v. St. Peter and St. Paul*, i. pl. 407.
6. For the justices may either charge particular persons or the whole parish, *R. v. Knightley*, i. pl. 399.
7. But it must show that the contributing parish is out of the parish to which the aid is given, *R. v. Boroughfen*, i. pl. 405.
8. So also it must state that the poor parish was unable without assistance to provide for its own poor, *R. v. Little Glen*, i. pl. 398.
9. And it is not sufficient merely to state that the poor parish was unable to provide for its own poor, but the two justices, where the rate is on a parish in the hundred, and the sessions where the rate is on a parish in the county and out of the hundred, must adjudge that the poor parish was unable to make such provision, *Cobbet v. St. Mary Lincoln*, i. pl. 400.
10. And therefore if an order rating a parish in the hundred state it to have been made by the sessions, it is bad, *Anonymous*, i. pl. 401.
11. So if an order made by two justices omit to state that the parish rated is within the hundred, it is bad, *R. v. Boroughfen*, i. pl. 402.
12. Therefore an order stating that the parishes rated were within the county of the city of Norwich was held bad, *St. Benedict v. St. Peter*, i. pl. 409.
13. And a sum certain must be mentioned in the order, and not a rate made at so much in the pound, *R. v. Telcombe*, i. pl. 404.
14. Therefore an order of two justices, adjudging that the parish of *St. Mary* was unable to maintain its own poor, and ordering the churchwarden of *St. Peter* to assess, raise, and levy 60*l.* for the maintaining of the poor of *St. Mary*, though bad as to the delegation of the churchwarden, was held good as to the gross sum, *R. v. St. Peter and St. Paul*, i. pl. 407.
15. For it is no objection that the ordering a gross sum may be unreasonable, as the inability of the parish may cease before the year expires, *R. v. Knightley*, i. pl. 399.
16. So an order stating as a reason for rating

a parish, that it did not pay half so much to the poor as the poor parish did, is bad, *Anonymous*, i. pl. 408.

17. So an order made by two justices "to contribute until we see fit to order to the contrary," is bad, *R. v. Marlborough*, i. pl. 406.

18. But a rate that occupiers of land in the parish of *A.* shall contribute 90*l.* a year, by equal monthly payments to the parish of *B.*, as long as *B.* shall be overburdened with poor, and the parish of *A.* have none, has been held good, *R. v. Eastchurch*, i. pl. 410.

III.

Of rating Parishes within the Hundred.

19. The two justices in exercising their judgment for the relief of a poor parish, ought to tax the next parish within the hundred, *Anonymous*, i. pl. 408.
20. But if the case require it, they may tax the whole hundred, *St. Benedict v. St. Peter*, i. pl. 408.
21. And as the jurisdiction of the two justices only extends to the hundred, an order made by them stating, that the parishes taxed are within the county of such a city is bad, for in cities there are no hundreds, except perhaps in London, whose wards are said to resemble hundreds, *Id. ibid.*

IV.

Of rating Parishes within the County.

22. The county, that is, those parishes that are not within the hundred in which the poor parish lies, cannot be rated in aid, unless the parishes that are within the hundred are unable to afford relief, *Anonymous*, i. pl. 412.
23. But it is not necessary that two justices should adjudge the hundred incapable of contributing relief before the sessions can charge a parish out of the hundred, *R. v. Percival*, i. pl. 413.
24. The sessions may rate a parish within the county of a city, although a city has no hundreds, *St. Benedict v. St. Peter*, i. pl. 409.
25. But the county sessions cannot rate a parish within the jurisdiction in aid of another parish lying within a borough which has an exclusive jurisdiction, *R. v. Holbeach*, i. pl. 419.

V.

Of the Places liable to be rated.

26. One vill may be rated in aid of another vill in the same parish, *Anonymous*, i. pl. 415.

27. For although the 45 Eliz. c. 2. only mentions *parishes*, yet *vills* are within the equity of it, *Anonymous*, i. pl. 415.
28. So a parish within a city may be taxed, *R. v. St. Benedict*, i. pl. 416.
29. So may a parish within a *titling*, a *liberty*, a *soke*, a *ward*, or any other division that is equivalent or synonymous to the word *hundred*, *R. v. Milland*, i. pl. 418.
30. So the inhabitants of an *extra-parochial* place may be rated in aid of an adjoining parish, *R. v. Clarendon Park*, i. pl. 414.
31. S. P. R. v. *Boroughfen*, i. pl. 411.
32. So an order taxing one parish in aid of another is good, although the *two parishes* together with others are incorporated for the maintenance of their poor, with fixed quotas of contribution between each other, under special officers, who are empowered to purchase land for the erection of poor houses and for a burial ground; there being a proviso in the act, in general terms, that nothing therein contained, should extend to repeal or lessen the power of justices of peace "to tax *parishes* in aid of others by virtue of 43 Eliz. c. 2. as fully as if this act had not been made," *R. v. St. Helen's*, i. pl. 420.
4. By 45 Eliz. c. 2. § 5. "the majority of the churchwardens and overseers, by leave of the lord of the manor, whereof any waste or common within the parish shall be parcel, and by order of sessions, may build, on such waste or common, at the charges of the parish, convenient houses for the impotent poor."
5. By 5 Car. 1. c. 4. § 22. "the overseers, with the consent of two justices, may set up any trade or manufactory for the employment and relief of the poor."
6. By 19 Car. 2. c. 4. § 1. "the sessions may set poor prisoners on work, and expend the profit arising from their labour towards their relief; but no parish shall be rated above sixpence a week on this account."
7. By 19 Car. 2. c. 4. § 2. "the sheriff, in case of sickness and diseases among poor prisoners, may provide proper places to remove them to, with the consent of three justices," &c.
8. By 19 Car. 2. c. 4. § 3. "the mayor, &c., who has the custody of the gaol, of any corporation, may, with the advice of three or more justices of the corporation, in time of infection, remove the prisoners to some convenient place within their jurisdiction, and may raise a stock to set them on work," &c.
9. By 3 Will. & Mary, c. 11. § 11. "there shall be kept in every parish, at the charge of the parish, a book or books wherein the names of all such persons who do or may receive collection, shall be registered with the day and the year when they were first admitted to have relief, and the occasion which brought them under that necessity."
10. By 3 Will. & Mary, c. 11. § 11. "yearly in *Easter-week*, or as often as it shall be thought convenient, the parishioners of every parish shall meet in vestry, before whom the said book shall be produced; and all persons receiving collections shall be called over, and the reasons of their taking relief examined; and a new list made and entered of such persons as they shall think fit to allow to receive collection."
11. By 3 Will. & Mary, c. 11. § 11. "no other person shall be allowed to have or receive collection at the charge of the parish, but by authority under the hand of a justice residing in the parish, or if none be there dwelling, in the parts near or next adjoining, or by order of *quarter sessions*, except in cases of pestilential diseases, and then such families only as are infected."
12. By 8 & 9 Will. 3. c. 30. § 2. "every person who shall be upon the collection

RELIEF OF THE POOR.

- I. The Statutes.
- II. The Order of Relief.
- III. Of deserted Families.
- IV. Of Workhouses.

I.

The Statutes.

1. By 45 Eliz. c. 2. § 1. "the overseers are to set to work the children of all such whose parents shall not be thought able to keep and maintain their children; and all such persons, married or unmarried, who have no means to maintain themselves, and use no ordinary and daily trade of life to get their living by; to relieve the lame, impotent, old, blind, and such other among them, being poor and not able to work; and to put out poor children apprentices."
2. And by 45 Eliz. c. 2. § 2. "the overseers, &c. shall meet once a month in the church, upon the *Sunday*, in the afternoon, after divine service, to take some good course in the premises."
3. By 45 Eliz. c. 2. § 4. "the justices, or any one of them, may send to the house of correction, or common gaol, such poor persons as shall not employ themselves according to the direction of the overseers."

books, and receive relief, and the wife and children of such person, cohabiting in the same house, shall wear a badge, as described in the act, on pain of losing the usual allowance; and if any parish-officer shall relieve any person not having such badge, he shall forfeit 20s."

Repealed by 50 G. 3. c. 52.

13. By 9 G. 1. c. 7. "no justice shall order relief to any poor person until oath be made before him of some matter which he shall judge a reasonable cause or ground for having such relief, and that the same person had applied to the parish for relief, and was refused; and until such justice has summoned two of the overseers to show cause why such relief should not be given."
14. By 9 G. 1. c. 7. § 2. "the person whom the justice shall order to be relieved, shall be entered in the books as a person entitled to receive collections, as long as the cause of such relief continues, and no longer."
15. By 9 G. 1. c. 7. § 4. "the churchwardens and overseers, with the consent of the parishioners assembled, on notice, in the usual manner, for that purpose, may purchase or hire any house or houses in the parish, and contract with any person for maintaining the poor therein."
16. It has been determined on this clause of the statute, that it is not necessary that all the churchwardens and overseers of a parish should concur in contracting for the maintenance of the poor; for that a majority of them, pursuing the direction of the statute, have this power, and that the act of the majority shall be binding and operative against the minority, *R. v. Beeston*.
i. pl. 473.
17. By 9 G. 1. c. 7. § 4. "poor persons refusing to be maintained in such house shall be put out of the book, and shall not be entitled to relief from the parish."
18. By 9 G. 1. c. 7. § 4. "where a parish is too small to purchase or hire such house for the poor, two such parishes, with the consent of the majority of their respective parishioners, and with the approbation of a justice, may unite in purchasing or hiring such house for the maintenance of their poor."
19. By 9 G. 1. c. 7. § 4. "and poor persons belonging to the respective parishes so uniting, who shall refuse to be lodged and maintained in such house, shall be put out of the collection book, and not be entitled to relief."
20. By 9 G. 1. c. 7. § 4. "the churchwardens and overseers of any parish, with the consent of the major part of parishioners where such house shall be purchased or hired, may contract with the overseers of any other parish for the maintenance of their poor."
21. By 9 G. 1. c. 7. § 4. "and in case any poor person shall refuse to be so maintained, he shall be put out of the book, &c."
22. But by 9 G. 1. c. 7. § 4. "no poor person, his children, or apprentices, shall acquire a settlement in the parish to which he shall remove to be maintained in such poor house."
23. By 16 G. 2. c. 18. "justices may act in matters for the relief and maintenance of the poor, although they are chargeable with the rates."
24. By 17 G. 2. c. 38. "overseers may act alone for the relief and maintenance of the poor in places where there are no churchwardens."
25. By 9 G. 3. c. 37. § 7. "if any churchwarden or overseer shall, knowingly, make payments to the relief of the poor in base or counterfeit money, or in other than the lawful money of Great Britain, he shall forfeit not less than 10s. nor more than 20s."
26. By 30 G. 3. c. 49. "any justice, physician, surgeon, or apothecary authorised by such justice, or the officiating clergyman of the parish, authorised as aforesaid, may at all times in the day-time visit the work-house, and examine the state and condition of the poor therein, and, if there be cause of complaint may certify the same to the next quarter sessions, who shall order the grievance to be redressed."
27. By 50 G. 3. c. 42. § 2. "if the poor are afflicted by any contagious distemper, the justice of the division may afford immediate relief."
28. But this act shall not extend to incorporated districts.
29. By 36 G. 3. c. 23. "the overseers, either by a majority at a vestry meeting, or by an order from a justice, may distribute and pay collection and relief to industrious poor persons at their own houses, if they be in ill health or bad circumstances, although such poor persons may refuse to go into the work-house."
30. By 36 G. 3. c. 23. justices may order relief to be given to poor persons at their own houses.
31. By 36 G. 3. c. 23. the cause of affording such relief must be stated in the order.
32. This act not to extend to incorporated districts.
33. Justice to order parochial relief to debtors in such gaols as are not county gaols, not exceeding 6d. per diem, 53 G. 3. c. 160. § 1, 2.
34. Overseers may cause legal settlement of

- debtor to be ascertained, but order of removal to be suspended while debtor is imprisoned, 52 G. 3. c. 160. § 3.
35. Order of removal to be served on the overseers of the poor of prisoner's parish who shall repay the expense attending the pauper, and in case of refusal the money advanced to be levied by distress, *Id.* § 4, 5.
36. Appeal allowed to quarter sessions, *Id.* § 5.
37. In case pauper has no legal settlement in *England or Wales*, allowance shall be paid out of county rate, *Id.* § 7.
38. Property in goods, &c., provided for the use of the poor, to be vested in overseers, not to repeal provisions in local acts, 55 G. 3. c. 157. § 1.
39. Parish officer may cause goods, &c., to be marked, *Id.* § 2.
40. Penalty not less than 1*l.*, nor more than 2*l.*, on persons buying or receiving into pawn any property provided for the poor by parish officers, or defacing marks, *Id.* *ibid.*
41. On non-payment of penalty, offenders to be committed to gaol for not exceeding two calendar months, *Id.* *ibid.*
42. Persons absconding with workhouse property, upon being convicted, shall be committed to gaol for three calendar months, *Id.* *ibid.*
43. Mark or stamp on articles to be evidence of the right of property: such mark, &c., not to be put on the outside of wearing apparel, *Id.* *ibid.*
44. The time for which justices may order relief to poor persons at their own homes extended to any period not exceeding three months from date of order, 55 G. 3. c. 157. § 5.
45. Justices making such orders may direct the payment of the relief to be discontinued, *Id.* *ibid.*
46. Limitation of allowance in certain cases, *Id.* *ibid.*
47. Persons guilty of misbehaviour in workhouse may be committed for any period not exceeding twenty-one days, 55 G. 3. c. 157. § 5.
48. Persons having the management of the poor, not to be concerned in contracts, &c., whilst in office: penalty 100*l.* Exemptions in certain cases, 55 G. 3. c. 157. § 6.
49. Notice of contracts for supplying workhouses to be inserted in one or more newspapers previous to meeting of overseers to enter into contracts, 55 G. 3. c. 157. § 7.
50. Confining the poor by chains or manacles unlawful, 56 G. 3. c. 129.
51. Cases in which relief may be ordered by

- incorporated parishes without previous application to visitor, 59 G. 3. c. 12. § 27.
52. Overseers empowered in certain cases to give relief by way of loan only, 59 G. 3. c. 12. § 29.
53. Pensions for service in the navy, army, &c., may be assigned in certain cases, where relief has been given, for the indemnity of parishes. Pension assigned to be paid to churchwardens, &c. Such assignments void by death of pensioner before the day of payment, 59 G. 3. c. 12. § 30.
54. Justices may order payment to overseers of the pensions, &c., of persons leaving their families chargeable, 59 G. 3. c. 12. § 31.
55. Justices empowered to order payment of seamen's wages for indemnity of parishes, where wife or family of seaman became chargeable to parish, 59 G. 3. c. 12. § 32.

II.

Of the Order of Relief.

56. Parish officers are bound to take care of casual poor; and if a person, not a parish officer, takes care of a person coming within that description, and for whom the parish officers would be liable to provide, he has a right to recover against them the expenses incurred on such an occasion, *Simmons v. Wilmott*, i. pl. 475.
57. Overseers of the poor are bound to endeavour to find work for the able-bodied poor who are out of employment, *R. v. Collett*, i. pl. 477.
58. *Quære*, Whether they can legally give relief to such person, otherwise than by setting them to work and paying them for their labour, *Id.* *ibid.*
59. One order of relief of poor prisoners cannot be made on the two statutes of 43 Eliz. c. 2. and 19 Car. 2. c. 4. *Eaton Bridge v. Westerham*, i. pl. 458.
60. Poor persons cannot be relieved out of their own parishes; and therefore if a poor person be settled at *A.* but reside at *B.* an order made on the overseer of *A.* to relieve the pauper in the parish of *B.* is bad, *Clypton v. Ravistock*, i. pl. 459.
61. An order of relief must state that the person in whose favour it is made is a poor and impotent person, *R. v. Hayworth*, i. pl. 460.
62. The sessions cannot order the new overseers to pay to the old overseers monies expended in law charges, *R. v. Chichester*, i. pl. 462.
63. An order upon overseers to pay so much money to a surgeon, for taking care of a pauper, is bad, *R. v. Smith*, i. pl. 461.
64. An order of two justices, made upon an

justices had jurisdiction; it not distinctly appearing for which of the two counties of *Warwick* or *Coventry* they were authorized to act, *R. v. Chilvers Cotton*,

ii. pl. 789.

18. So where an order "*Wills* to wit," was directed to the overseers of *Donhead*, in the county of *Wills*, and to the overseers of *Moor Critchell*, in the county of *Dorset*, stating that complaint had been made by the overseers of *Donhead*, in the county of *Wills* aforesaid, to us, &c., two justices of the said county, it was held a nullity, for there being two counties mentioned before, they ought to have expressly stated for which of the counties they were justices, *R. v. Moor Critchell*,

ii. pl. 790.

19. The justices cannot send a pauper to an extra-parochial place which has not the face of a parish, *Bridewell v. Clerkenwell*,

ii. pl. 776.

20. Nor to a hamlet within a parish unless it is a township or vill, *R. v. Tamworth*,

ii. pl. 785.

21. Nor to a place which does not maintain its own poor, *R. v. Swalciffe*,

ii. pl. 786.

22. The justices cannot remove a pauper from an extra-parochial place, *Forest of Dean v. Linton*,

ii. pl. 777.

23. The justices may send a woman to her master with whom she lived as a hired servant, *R. v. Gravesend*,

ii. pl. 778.

24. The justices must remove a pauper to the place of his last legal settlement; for they cannot order the parish-officers of such place to relieve him in the parish where he resides, *Clypton v. Ravistock*,

ii. pl. 779.

25. Where the unemancipated daughter of an *Irishman*, not having acquired any settlement of his own in *England*, became pregnant, being unmarried, and as such, was actually chargeable under 55 G. 3. c. 101. § 6.: Held, that this did not make the father and the rest of his family removable by a pass into *Ireland* under 59 G. 3. c. 12. § 33., but that the daughter might be removed by an order to the place of her birth in *England*, *R. v. Whitehaven*,

ii. pl. 793.

26. Where a district previously extra-parochial was, by an act of parliament, made a township, and it was provided, that from thenceforth it should maintain its own poor, and repair its own roads, and have the like powers, privileges, and immunities, and be subject to the same regulations as other townships within the county: Held, that this clause was prospective only, and that a bastard born within the

district previously to the passing of the act was not settled there, *R. v. Oakmere*,

ii. pl. 794.

27. The justices cannot make an order of removal "to continue till the next session," *Bratlar v. Uoley*,

ii. pl. 780.

28. If the two justices make an order improvidently, they may grant a *supersedeas*, *Pancras v. Rumbold*,

ii. pl. 781.

29. A single justice may receive the complaint of the overseer, but two justices must make the order of removal, *R. v. Westwood*,

ii. pl. 782.

30. And such order must be signed by the two justices in the presence of each other, *R. v. Howarth*,

ii. pl. 822.

31. But an order of removal signed by two justices separately, and in different counties, is only voidable and not void, *R. v. Stotfold*,

ii. pl. 788.

32. An alteration made in an order of removal by one justice in the presence of the other, does not vitiate the order; as an alteration made by one of the magistrates immediately after the order was signed by both, but in the presence of the other, and before it was delivered to the parish-officers to be executed, although it was not re-sealed and re-delivered by the justices after the alteration; for, by Lord KENYON, such an alteration would not vitiate a much more serious instrument than this; a warrant by which the life of a person is to be decided, *R. v. Llanuwisio*,

ii. pl. 787.

33. The two justices cannot remove more than one family by the same order, *Chewton v. Compton*,

ii. pl. 785.

34. If a parish lie within two counties, and an overseer be appointed by the justices of one of the counties, any two justices may remove a pauper into that part of the parish for which no overseer is particularly appointed; for as to this purpose, the person chosen by the one county is the overseer of the whole parish, *R. v. Mersval*,

ii. pl. 784.

35. But if two justices make an order of removal improvidently, they may supersede the order, *Pancras v. Rumbold*,

ii. pl. 781.

III.

The Style of the Justices.

36. An order of removal need not state that the justices were of the *division* where the pauper lived; for the stat. 13 & 14 Car. 2. c. 12. is in this respect only directory, *Anonymous*,

ii. pl. 795.

37. But before the statutes of 26 G. 2. c. 27. and 7 G. 3. c. 21. it was necessary to state

- one of the justices signing an order of removal to be of the *quorum*, *Albrighton v. Sipton*, ii. pl. 797.
38. The justices must be styled in the order "justices of the peace," *R. v. Upton*, ii. pl. 796.
39. And they must be styled justices of the peace "IN and FOR the county; for an order stating them to the justices of the peace in the county only, is bad, *R. v. Oulton*, ii. pl. 798.
40. So if an order be directed to the officers of two different parishes, and the justices be stated to be justices "for the county aforesaid," it is bad. *R. v. Stepney*, ii. pl. 799.
41. Therefore an order directed to the overseers of *Bedworth*, in the county of *Warwick*, and to the overseers of *Sow*, in the county and city of *Coventry*, stating that complaint had been made by the overseers of *Bedworth*, "to us, &c., two of his majesty's justices for the county aforesaid," was held a nullity; because it does not distinctly appear for which of the two counties they were appointed to act, *R. v. Chibbers Coton*, ii. pl. 789.
42. For where two counties have been mentioned in an antecedent part of an order of removal, the justices making the order must state themselves to be justices of the proper county; it not being sufficient to describe themselves justices of the peace in and for the said county, although the proper county be named in the margin, and be also named last before such description of the justices, *R. v. Moor Critchell*, ii. pl. 790.
43. But an order of removal stating the justices to be justices of the peace in and for the county, by the common appellation of the county, as "*Shropshire*" instead of "*Salop*," is sufficient, *R. v. Madeley*, ii. pl. 800.
44. So where two justices, in an order removing *Ann Day* from *Andover*, in the county of *Southampton*, to *Lambourn* in the county of *Berks*, stated themselves to be "two of his majesty's justices of the peace for the borough or town and parish of *Andover*," &c., it was held good, *R. v. Andover*, ii. pl. 801.
45. And therefore the sessions cannot amend this defect under the 5 G. 2. c. 19. *Great Bedwin v. Wilcot*, ii. pl. 815.
46. The order must not only state that it was made on complaint but that it was made on the complaint of the parish-officers, *Weston Rivers v. St. Peter's*, ii. pl. 803.
47. But if the order refer to the person by whom the complaint was made, it is sufficient, *R. v. Kidderninster*, ii. pl. 804.
48. And it has been held, that an order of sessions beginning "upon hearing the appeal of *Burcot*," shall be intended "the inhabitants of *Burcot*," *R. v. Burcot*, ii. pl. 941.
49. And the justices can only remove those persons, of whom the parish officers complain as likely to become chargeable, *R. v. Newington*, ii. pl. 807.
50. An order of removal made upon complaint, that *M. S.* the wife of *W. S.*, who is absent from her is come to inhabit, &c. and is now with child which is likely to be born a bastard, adjudging the said *M. S.* to be actually chargeable was held sufficient in form, although the complaint did not state that the pauper was actually chargeable, *R. v. Inskip with Sowerby*, ii. pl. 814.
51. And order of removal made on the complaint of the churchwardens and overseers of the borough of, &c., is good; for though a borough may consist of several parishes, and so uncertain to which parish the order relates, yet that shall not be intended, *Macclesfield v. Leithfrith*, ii. pl. 802.
52. An order directed to the parish officers of two parishes, stating, that "whereas complaint has been made by you unto us," &c., without stating which of the two parishes made the complaint, is good; for if both complain, it must be upon the complaint of the right parish, *Spalding v. St. John Baptist*, ii. pl. 805.
53. And the complaint must be necessarily intended to be made by that parish, which was aggrieved by the residence of the pauper, *Horsham v. Hensfield*, ii. pl. 809.
54. An order of removal was stated to be made "upon hearing the differences, allegations, and proofs," &c., and the court held the order bad, for these words are not tantamount to a complaint, *Shagford v. North Bovey*, ii. pl. 806.
55. An order of removal also must show, that the persons to be removed by it actually came into the parish, and endeavoured to settle there, *R. v. South-Marston*, ii. pl. 810.
56. Therefore when an order set forth, that "*H. Tate* and his wife do endeavour to intrude into the parish of, &c., and are

IV.

Of the Complaint.

45. An order of removal must state that it was made upon complaint; for it is the complaint that gives the justices authority to remove, and is therefore not matter of form only, but of substance, *R. v. Hareley*, ii. pl. 811.

- likely to become chargeable," it was quashed; for unless they had actually come into the parish, there could not be any likelihood of their becoming chargeable, *R. v. Grafton*, ii. pl. 808.
51. An order of removal need not state in terms, that the complaint was made on oath, *R. v. Standish*, ii. pl. 812.
59. For if the order state "upon due proof thereof we do adjudge," &c., it is sufficient, *Ibid. notis.*

V.

Of the Examination.

60. Persons complained of ought to have notice of the complaint, and to be heard against it before they are removed; for though it is not absolutely necessary, it is fit it should be done, *Anonymous*, ii. pl. 815.
61. The examination must be taken by the same two justices who sign the order of removal, *R. v. Wykes*, ii. pl. 818.
62. And they must take the examination, and sign the order in the presence of each other, *R. v. Howarth*, ii. pl. 822.
63. Therefore an order of removal, stating that the examination was taken "before us, or one of us," is bad, *Ware v. Stanstead*, ii. pl. 816.
64. So also an order of removal made by two justices in the presence of each other, on an examination taken and transmitted to them by justices of another county, is bad; although such examination be verified by oath that it was duly taken, *R. v. Coln St. Aldwin's*, ii. pl. 821.
65. Formerly the general declarations of a pauper respecting his settlement, were admitted in evidence to prove his settlement, *R. v. Bury*, ii. pl. 825.
- S. P., *R. v. St. Sepulchre*, ii. pl. 826.
66. But now if two justices take the examination of a pauper relative to his settlement, but do not remove him, and the pauper afterwards die or become insane, two other justices cannot remove his family on such examination, *R. v. Eriswell*, ii. pl. 828.
67. Nor is an *ex parte* examination in writing of a pauper, taken on oath before two magistrates for the purpose of removing him to the place of his settlement, admissible evidence upon an appeal against an order of removal, on the ground of the pauper having absconded between the notice of appeal and the trial of it before the quarter sessions, although the respondents had used due diligence, but without effect, to procure the attendance of the pauper as a witness, he not having been heard of from the time of his absconding, *R. v. Newnham Courtney*, ii. pl. 829.
68. Neither the hearsay of a pauper who is dead, nor his *ex parte* examination taken in writing before magistrates touching his settlement, are admissible evidence of such settlement, after his death, *R. v. Ferrybridge*, ii. pl. 831.
69. Therefore where the question was whether the pauper was settled by birth at Chadderton, and he deposed on his examination that he had heard his mother, who had been dead some years, say that she was relieved by the parish of Chadderton, the evidence being hearsay was inadmissible, *R. v. Chadderton*, ii. pl. 830.
70. So where the examination of the pauper stated "that her husband had informed her before he died, that his last legal settlement was at Abergwilly, by hiring and service by the year to one I. H. there" it was held inadmissible, as was also the husband's examination before his death, in which he had positively sworn that his settlement was at Abergwilly, *R. v. Abergwilly*, ii. pl. 832.
71. But it seems that the dying declarations of a pauper on his death bed respecting his settlement are good evidence; for such testimony is uniformly received in criminal cases, *R. v. Bury*, ii. pl. 825.
72. But an order of removal signed by two justices separately, and in different counties, is not void, but only voidable by appeal to the next sessions, *R. v. Stotfold*, ii. pl. 788.
73. It is not necessary to state in an order of removal, that the pauper was summoned, *R. v. Wykes*, ii. pl. 819.
74. It is not necessary in all cases to state that the pauper was examined; but if it can be, it is fit it should be so, though not absolutely necessary, *Anonymous*, ii. pl. 814.
75. Therefore an order stating, "Whereas we, the said justices, upon examination of the premises upon oath, and other circumstances, do adjudge, &c.," is good, *R. v. Bagworth*, ii. pl. 827.
76. So also an order stating that it was made on due examination is good, without stating that the examination was on oath, *Mungerhanger v. Warden*, ii. pl. 81.
77. So also an order stating it to have been made upon due consideration instead of examination, is good, *R. v. Fetherston*, ii. pl. 829.
78. So also an order of removal of three children under the age of seven years stating, "we the said justices, upon due proof made thereof, as well upon the examination of Elizabeth their grandmother

as otherwise," &c. is good, *R. v. Bucklebury*, ii. pl. 824.

79. A pauper who refuses on his examination to answer a proper question, may be committed by the magistrates "until he shall answer," *R. v. Jackson*, ii. pl. 827.

VI.

Of the Adjudication.

80. The justices, in an order of removal, must expressly ADJUDGE, that the place to which the pauper is ordered to be removed, is the place of his last legal settlement, *Bury v. Arundel*, ii. pl. 835.

81. Therefore where a son was removed to the parish of *Middleham*, on an adjudication that *Middleham* was the last legal settlement of the father, the order was quashed; for the settlement of a father is not absolutely necessary to the settlement of his son, *R. v. Middleham*, ii. pl. 842.

82. So where the justices ordered the pauper to be removed to *A. as the place* of his last legal settlement; for this is no adjudication that *A.* is so, *R. v. Westwood*, ii. pl. 849.

83. So where the adjudication was that the parties were likely to become chargeable, without saying to which parish; for the parish is not expressed, and it cannot be implied; an express adjudication being necessary in some words or other, *Uffculm v. Chisthydon*, ii. pl. 853.

84. So an order reciting, "Whereas *B.* is, as we are credibly informed, the place of his legal settlement," was quashed; for it ought to have been distinctly averred that *R.* was the place of the pauper's last legal settlement, *Trowbridge v. Weston*, ii. pl. 834.

85. The words "legal settlement," and "last legal settlement," are said to have been held of the same import; because by every new settlement the preceding settlement is discharged, *Id. ibid. notis.*

86. But an order, "and we do also adjudge that the last legal place of the said *A. B.* is at *C.* in the county of *D.*" leaving out the word settlement, is bad, *R. v. Warnhill*, ii. pl. 852.

87. So the order must adjudge that the persons were likely to become chargeable; for stating them as complained of by the parish officers as likely to become chargeable, is not sufficient, *Suddlecomb v. Burwell*, ii. pl. 838.

88. And if the person to be removed be a certificate person, the justices must adjudge that he is actually chargeable, *Malden v. Fletwick*, ii. pl. 839.

89. But such an order is good without stating that the certificate was allowed, *R. v. Newton*, ii. pl. 841.

90. An order of removal, adjudging a pauper to be last legally settled in the parish of *A.*, and ordering him and his family to be removed, is bad, because non constat who are his family, *R. v. Johnson*, ii. pl. 837.

91. But an order adjudging a pauper to be settled at the parish of *A.*, and ordering him and his wife and his son of one year old to be removed to the said parish, is good, *Hobey v. Kingsbury*, ii. pl. 851.

92. An order of removal to remove a wife, "and whereas, on oath made by the said *E. F.*, it appears that her husband was last legally settled at *H.*; these therefore, &c." is bad; for there is no adjudication that the husband was last legally settled at *H.*, *R. v. Hackney*, ii. pl. 836.

93. An order of removal stating that the person to be removed "will become chargeable if permitted to abide," is bad, *Anonymous*, ii. pl. 843.

94. An order adjudging that the person "is likely to become chargeable, as we are informed," is bad, *R. v. Waltham Magna*, ii. pl. 844.

95. An order stating that the pauper is settled at such a parish, "according to our knowledge," is bad, *R. v. St. Mary Ottery*, ii. pl. 846.

96. An order of removal stating, that "on examination we do believe the same to be true," without making an adjudication, is bad, *Stallingburgh v. Harkay*, ii. pl. 848.

97. An order stating that the pauper may become chargeable, is bad, *Toelby v. Willerton*, ii. pl. 850.

98. So an order stating that the pauper is likely to become chargeable, without saying to what parish, is bad, *Uffculm v. Chisthydon*, ii. pl. 855.

99. But an adjudication that the paupers have become chargeable, imports that they are chargeable to the parish, *R. v. Honiton*, ii. pl. 854.

100. So also in an order the words "who are likely to become chargeable" amount to an adjudication, *R. v. Rockwell*, ii. pl. 845.

101. A conditional order, as an order to remove a poor man, "except he find security to be allowed by the said justices," is bad, *Oakham v. Whittlesea*, ii. pl. 840.

102. An order of justices removing nurse children to their derivative settlements, without taking notice of the death, or adjudging the place to which they are removed to be the settlement of their parents, is good, *R. v. Bucklebury*, ii. pl. 856.

103. An order removing a wife to her maiden settlement, without stating that her husband was dead, or that he could not be found, or that he had not gained a settlement, is good, *R. v. Ryton*, ii. pl. 855.
 See also *R. v. Higher Walton*, ii. pl. 112.
 See also *R. v. Hinzworth*, ii. pl. 115.
 See also *R. v. Leigh*, ii. pl. 116.
 See also *R. v. Woodsford*, ii. pl. 118.
 See also *R. v. Hedsor*, ii. pl. 119.
104. So an order of removal of *I. S.* and *B.* his wife, made upon the examination of the wife, adjudging that they lately came into the parish of *A.*, and are likely to become chargeable to it, and were last legally settled in *M.*, is good upon the face of it, and conclusive upon the parish of *M.* as to the marriage and settlement of the husband and wife; so that upon a subsequent removal of the wife, describing her as *B. S.*, single woman, from *M.* to *B.*, the parish of *M.* cannot show in evidence that the marriage was null and void, *R. v. Binegar*, ii. pl. 905.
105. An order for the removal of a married woman (not stating her to be such) and her children to *Y.*, adjudging that the lawful settlement of her and her children is in *Y.*, was held well, without adjudging that *Y.* was her husband's settlement; and proof by the mother of the husband that he gained a settlement in *Y.* by hiring and service was held sufficient without calling the husband; although it appeared that he was in this country, *R. v. Yspetty*, ii. pl. 857.
106. An order of removal made by two justices, upon the examination of the pauper taken by one of them, pursuant to stat. 49. G. 3. c. 124. § 4., need not state the special circumstances of taking the examination, &c. *R. v. South Lynn*, ii. pl. 858.
107. An order of removal must state the name of the pauper, or describe him as a person whose name is unknown, *Southell v. Needwell*, ii. pl. 863.
108. By stat. 54 G. 3. c. 170. paupers ordered to be removed, may be conveyed by other persons than churchwardens or overseers.
109. An order of removal must be directed to the officers of the parish from which the paupers are removed, *St. George's v. St. Olave's*, ii. pl. 861.
110. But if it be directed to the officers of both parishes, the addition of the wrong parish is only surplusage, *Spalding v. St. John Baptist*, ii. pl. 805.
111. But if the overseers of *A.* are to remove, and the overseers of *B.* are to receive the pauper, and the order be directed "to the overseers of the parishes of *A.* and *B.*" ordering them both to remove and receive the pauper, it is bad, *Bedwick's case*, ii. pl. 859.
112. So if an order be directed to the constable only, he may refuse to obey it; but if he remove the pauper under it, the removal is good, *R. v. Wangford*, ii. pl. 860.
113. An order of removal was directed to the churchwardens and overseers of the parish of *L.* In fact, *L.* was a vill, and there were no churchwardens in it: held, that the word "churchwardens" might be rejected as surplusage, and that the sessions might, under the statute 5 G. 2. c. 119. § 1., amend the order by inserting in it "or vill," *R. v. Amluch*, ii. pl. 256.
114. An order directed to both parishes conjunctively, without saying which is to remove and which to receive, is bad, *Bisfield v. Bamstead*, ii. pl. 862.
115. An order directed to the parish officers of different counties, and the justices styling themselves of the county aforesaid, no county being named in the margin, is bad, *R. v. Stepney*, ii. pl. 863.
116. But where "the borough of *Leeds*" stood in the margin of an order of removal, and the direction was, "to the churchwardens and overseers of the township of *Holbeck* in the said borough," it was held good; for the margin is to be considered as a part of the order, *R. v. Holbeck in Leeds*, ii. pl. 864.
117. An order of magistrates was directed to the parish of *W.* in the county of *Rutland*, and also to the parish of *M.* in the county of *Leicester*, and the word "county of *Rutland*," were then written in the margin, and the magistrates were in a subsequent part of the order describe as justices of the peace for the county aforesaid; held, that it thereby sufficient appeared that they were justices for the county of *Rutland*, *R. v. St. Mary Leicester*, ii. pl. 79.
118. And an order of removal, directed to the parish officers "of the parish, town, ship, or division of *A.*" seems good, *v. Ulverstone*, ii. pl. 86.
119. An order of removal directed to "the parish of *Poole* or town and county *Poole*" is sufficient, though the proper name of the parish be *St. James in Pool*

VII.

The Direction of the Order.

there being no other parish in the town and county of Poole, *R. v. Topsham*, ii. pl. 551.

VIII.

Description of the Parties.

120. An order of removal which includes children must state their respective ages, *R. v. Trinity in Chester*, ii. pl. 867.
121. An order of removal must state the name of the pauper removed, or describe him as a person whose name is unknown, *Smith v. Needwell*, ii. pl. 868.
122. The ages of children must be set out when they are removed to their father's settlement, but need not when they are removed to their own settlements, *R. v. Heywoodall*, ii. pl. 869.
123. But to render a description of the ages of children unnecessary, the place to which they are removed must be expressly adjudged to be the place of their last legal settlement, *R. v. Uffculme*, ii. pl. 870.

IX.

Of Passes.

124. For the removal of persons under vagrant passes, see VAGRANTS, ii. p. 694 to 706.

X.

Suspending the Order.

125. By 35 G. 3. c. 101. § 2. any order of removal or vagrant pass may be suspended on its being made to appear, that the party to be removed or passed, is unable to travel by reason of sickness or other infirmity, or that it would be dangerous for him or her so to do.
126. The suspension and the subsequent permission to execute it, are to be entered on the order or pass, and no act done by the pauper or vagrant between the suspension and removal, shall have any effect.
127. By 35 G. 3. c. 101. § 2. the charges incurred by the suspension, shall be paid by the parish to which the pauper or vagrant is removed.
128. By 35 G. 3. c. 101. § 2. if such charges be not paid within three days after demand, and there be no notice of appeal, they may be levied by distress.
129. And if the parish be in the jurisdiction of another magistrate, he shall back the warrant for execution.
130. In all cases where any order of removal or vagrant pass shall be suspended, any other justice of the county or place where

such removal or pass shall be made, may order the same to be executed, &c.,

49 G. 3. c. 124. § 1.

131. In case execution of order of removal suspended, the time of appealing against such order shall be computed from the time of serving such order, and not from the time of making removal,

49 G. 3. c. 124. § 2.

132. Order of removal suspended in case of sickness, may also extend to other persons named, in the order to prevent the separation of a family,

49 G. 3. c. 124. § 3.

133. Any magistrate may take the examination of an infirm pauper as to his settlement, and report to petty sessions,

49 G. 3. c. 124. § 4.

134. And if the justice refuse to back the warrant, the court of king's bench will grant a *mandamus*; for in this case he acts ministerially only, *R. v. Kynaston*,

ii. pl. 876.

135. Where husband and wife and their children were removed to their settlement, and the order was suspended as to the husband, until it should be made to appear that he was sufficiently recovered to be able to travel, the wife and children being removed after his death, without any subsequent order removing the suspension of the first order, is no reason for the sessions to quash that order on appeal, nor to quash another order for payment of the charges of such suspension, *R. v. Englefield*, ii. pl. 880.

136. By 25 G. 3. c. 101. § 2. if the costs and charges exceed 20*l.*, the order to pay may be appealed against, &c. &c.

137. But nothing in this act shall alter or abridge the power of justices to pass or punish vagrants under 17 G. 2. c. 5., excepting only as to suspending the pass.

138. A party aggrieved by an order of justices, directing payment to the amount of above 20*l.* of the costs and charges of the suspension of an order of removal, under stat. 35 G. 3. c. 101. § 2. may appeal to the next sessions, though he omit to give notice of such his appeal within three days after the demand of such costs and charges, *R. v. Bradford*, ii. pl. 877.

139. Under the stat. 55 G. 3. c. 101. § 2. an order of justices suspending an order of removal, on account of sickness, may be made, though the pauper were not brought before the justices at the time of making such order, *R. v. Everdon*,

ii. pl. 878.

140. The power given to magistrates under 35 G. 3. c. 101. § 2. of ordering the charges incurred during the suspension of an

- order of removal to be paid by the parish to which the order is made, is confined to to two cases only,—the death or removal of the pauper; and therefore, where a pauper during the suspension of an order of removal became irremovable in consequence of an estate descending to him: Held, that such a case was not within the act, and that the pauper not having been removed, no order for the payment of any charges incurred during the suspension of the original order of removal could be made, *R. v. Chagford*, ii. pl. 881.
141. An order of removal was made and suspended on the same day, by reason of the infirmity of the pauper. She lived three years afterwards, and no notice of the order of removal was served on the parish to which she was to be removed under the order, until after the death of the pauper: Held, that the notice of the order not having been served within a reasonable time, the order of removal was a nullity, *R. v. Lampeter*, ii. pl. 882.
- to be kept to hard labour for any time not exceeding one month," *Baldwin v. Blackmore*, ii. pl. 885.
146. If on a vagrant search a poor man confess himself settled in a different parish, and two justices remove him accordingly, and he immediately returns, yet he cannot, on this confession of the fact, be committed under 17 G. 2. c. 5.; for there must be a regular charge made against such an offender, and he must be summoned in order to be heard on that charge, *R. v. Angel*, ii. pl. 884.
147. But the justices may, after a conviction, commit a pauper who returns after an order of removal, although the order be quashed at sessions, if on *certiorari* it be affirmed in the king's bench, *R. v. Hall*, ii. pl. 883.
148. A conviction on the statutes of 13 & 14 Car. 2. c. 12. and 17 G. 2. c. 5. must state the parish to which the pauper returned, *R. v. Cole*, ii. pl. 886.
149. A conviction stated that plaintiff having been brought before a magistrate, on an information charging him with having unlawfully returned without a certificate to a parish from which he had been removed, and that upon that occasion he confessed himself guilty: Held, that this conviction was good upon the face of it, and that it was not necessary to state in it expressly any act of vagrancy, it being for the party convicted to show in his defence that he did not return in a state of pauperism, *Mann v. Doovers*, ii. pl. 888.

XI.

Cancelling the Order.

142. The parish in whose favour an order of removal is made may by consent abandon it without waiting to appeal to the sessions, and having it quashed there. And after such order cancelled by the removing magistrate, with the consent of both parishes, before the time of appeal, another order made by them, removing the pauper to a different parish, was held good, *R. v. Diddlebury*, ii. pl. 897.

XII.

Returning after Removal.

143. By 13 & 14 Car. 2. c. 2. § 3. "pauper returning of his own accord to the parish from whence he was removed, may be punished as a *vagabond*."
144. An order of removal only prevents the person removed from returning in a state of vagrancy; and therefore if such person, on his return to the parish from whence he was removed, take a tenement of the yearly value of ten pounds, he cannot be punished on the above statutes, *R. v. Fillongley*, ii. pl. 887.
145. The warrant of commitment of a pauper for returning after removal must be on the statute of 17 G. 2. c. 5.; and it must pursue the words of the act; and therefore such a warrant committing a man to the house of correction, "there to remain until discharged by due course of law," is bad: for the words of the statute are, "there to be kept to hard labour for any time not exceeding one month," *Baldwin v. Blackmore*, ii. pl. 885.
150. An order of removal, if not appealed from to the next sessions, becomes final and conclusive, *R. v. Hinsworth*, ii. pl. 895.
151. Therefore where two persons, by the names of "George Wise and Jane his wife," were removed from *Newbury to Enborn*, and the parish of *Enborn*, having neglected to appeal, removed the woman (who was not in fact Wise's wife), by the name of *Jane Moor*, from *Enborn to Silchester*, who appealed; it was held that the first removal being unappealed from was conclusive, and that *Enborn* was thereby estopped from saying that she was not Wise's wife, *R. v. Silchester*, ii. pl. 892.
152. Therefore if a pauper be removed by an order of justices, he cannot be removed to a third parish without appeal, *R. v. Chipping Farringdon*, ii. pl. 889.
153. So an order of removal to a parish consisting of several townships, is binding

- on the township to which it is delivered, if not appealed from, *R. v. Kirby Stephen*, ii. pl. 894.
154. Thus where a pauper was removed to the parish of *Stepney*, instead of to the township of *Spitalfields* in the parish of *Stepney*, and *Stepney* neglected to appeal, it was held to be conclusive on *Stepney*, and to fix the pauper there as the place in which he was last legally settled, *Spitalfields v. Bromley*, ii. pl. 890.
155. So an order removing a certificate-person is conclusive if unappealed from, *R. v. Eding*, ii. pl. 897.
156. So an order removing a wife is, if unappealed from, as conclusive as if the husband himself had been removed with his wife, although the husband is not in fact settled in the parish to which his wife is removed, *R. v. Towcester*, ii. pl. 898.
157. And being conclusive that the place to which the pauper is removed is the place of his last legal settlement, a new settlement can only be gained by some act altogether subsequent to his removal, *R. v. Kenilworth*, ii. pl. 900.
158. But an order of removal is only conclusive to those who are mentioned in it; so that if only the father and mother be removed thereby, the question relative to the settlement of their children is still open, *R. v. Southoram*, ii. pl. 899.
159. It is conclusive as to the fact of marriage, and even as to after-born children, *R. v. Woodchester*, ii. pl. 891.
160. And also as to all settlements derived from the parties removed, *R. v. St. Mary Lambeth*, ii. pl. 903.
161. If therefore a *feme covert* be removed by an order of two justices, from *A.* to *B.* describing her as "*widow*," and there be no appeal against it, it is conclusive not only as to her settlement, but as to that of her husband also, *R. v. Rudgeley*, ii. pl. 904.
162. An order of removal of *J. S.* and *B.* his wife, made upon the examination of the wife, adjudging that they lately came into the parish of *K.*, and are likely to become chargeable to it, and were last legally settled in *M.*, is good upon the face of it, and conclusive upon the parish of *M.* as to the marriage and settlement of the husband and wife, so that upon a subsequent removal of the wife, describing her as *B. S.*, single woman, from *M.* to *B.*, *M.* cannot show in evidence that the marriage was null and void, *R. v. Binegar*, ii. pl. 905.
163. Order of removal of father confirmed, is conclusive as to the settlement of the son, although the son be not named in the

- order, and be emancipated at the time of making it, if he hath not acquired any settlement in his own right, *R. v. Catterall*, ii. pl. 908.
164. But to render an order conclusive for want of appeal, even to the parties mentioned in it, it must be a *subsisting* order; for if the order be *deserted*, it is not binding, though unappealed from, *R. v. Llansrhudd*, ii. pl. 895.
165. So also it must be a *legal* order, or the neglecting to appeal against it will not render it conclusive, *R. v. Swadcliffe*, ii. pl. 896.
166. Therefore where a person rented and resided upon a tenement of more than ten pounds a year in the parish of *A.*, but was removed by an order of two justices to the parish of *B.*, it was held that this order was not conclusive, though unappealed from, *R. v. Fillongly*, ii. pl. 901.
167. But an order of removal, though unappealed from, is not conclusive if it do not distinctly appear upon the face of it, that the justices had jurisdiction, *R. v. Chivers Coton*, ii. pl. 903.
168. An order of removal executed and unappealed against, is conclusive as to the settlement of the pauper at the time of such order, even as between third parishes no parties to the former order, *R. v. Coraham*, ii. pl. 906.

XIV.

Removal after Appeal.

169. On an order of removal being reversed, two justices within whose jurisdiction the *appellant parish* lies, may remove the pauper back to the parish from whence he was sent, *Honilton v. South Beveiton*, ii. pl. 909.
170. If an order of removal be confirmed at sessions, the parish where the pauper is adjudged to be settled cannot remove him to a *third parish*, on a settlement gained previous to the confirmation of the order, *Harrow v. Rislip*, ii. pl. 910.
171. If an order of removal be reversed on appeal, and the pauper return to the *respondent parish*, they may remove him from thence to a *third parish*; for an order reversed is only conclusive on the *appellant parish*, *St. Michael's v. Kingston Bowsey*, ii. pl. 915.
172. If a pauper be removed from the parish of *Dale* to the parish of *Sale*, and the parish of *Sale* neglect to appeal, he cannot, at the distance of four years, be removed from a *third parish* to the parish of *Sale*, unless it appear that he had not gained a settlement in the third parish, *Thackham v. Findon*, ii. pl. 911.

173. If a pauper be removed to one parish, he cannot be removed back till after appeal, *R. v. Chipping Farringdon*,
ii. pl. 889.

174. An order of removal quashed for informality is not conclusive between the contending parishes, *R. v. Bishopscotton*,
ii. pl. 912.

175. And therefore where the sessions quashed an order removing the pauper from *A.* to *B.* for want of a proper adjudication of the last legal settlement of the pauper, it was held not to be conclusive, *R. v. St. Andrew's Holborn*, ii. pl. 921.

176. But where the order is good with respect to the settlement of the person removed, but is reversed for a mere defect in form, it is said to be final as to the settlement, and a bar to all subsequent orders, *Mungerhunger v. Warden*, ii. pl. 914.

177. And if an order be quashed generally, without stating any particular reasons for it, it shall be intended to have been quashed upon the merits, and shall therefore be conclusive, *R. v. Leigh*, ii. pl. 920. See also *R. v. Hinxworth*, ii. pl. 895.

178. If, on appeal, a pauper be settled in the parish of *A.*, and is removed from thence by a subsequent order, it must appear that he had gained another settlement, *Alderton v. Felington*, ii. pl. 913.

179. If an order of sessions be discharged, yet the pauper may be removed from a third parish to the appellant parish; for it is only conclusive as between the then contending parishes, *Clarendon v. Cole St. Aldwin's*, ii. pl. 915.

180. An original order is not discharged by the allowance of the appeal, *R. v. Sarrett*, ii. pl. 916.

181. If a certificate man be removed before he become chargeable, and the order, on appeal, be reversed, yet this shall not conclude the certificated parish from removing him to the certifying parish after he becomes actually chargeable, *R. v. Oga-thorpe*, ii. pl. 917.

182. If a pauper be removed from *A.* to *B.*, and, on appeal, the order be discharged, yet the parish of *A.* may remove the pauper to the parish of *B.* if he afterward gain a settlement in that parish, *R. v. Bradenham*, ii. pl. 918.

183. An order of removal discharged does not prevent a third parish from shewing a settlement in the same parish gained subsequent to that which was in question when the order was discharged, though prior to the sessions in which the order was discharged, *R. v. Bently*, ii. pl. 919.

XV.

Persons not removable.

184. A wife cannot be removed while residing on her husband's estate, *R. v. Aythorp Rooding*, ii. pl. 616. But see farther upon this subject "MILITIA-MEN and SOLDIERS," and "IRREMOVABLE."

XVI.

Appeal against Order of Removal.

185. For the time and manner of appealing against an order of removal, See ante, APPEAL, ix.

REPUTED THIEVES.

See VAGRANTS.

RIVERS (NAVIGABLE.)

See TOLLS—POOR'S RATE.

ROOMS.

1. A first and second floor unfurnished, at the rent of 10*l.* a year, is a tenement so as to give a settlement, although the apartments are not distinct from the house, *R. v. St. George's*, ii. pl. 130.
2. A furnished room, with fire found, rented by the week for a particular purpose, and the landlord to have the use of it at other times, is a tenement, *R. v. Whitechapel*, ii. pl. 132.

RUNAWAYS.

See RELIEF OF POOR—VAGRANTS—DESERTED FAMILIES.

S.

SALARIES.

1. An officer appointed by the commissioners of the salt-office for the purpose of superintending salt-works carried on in the parish in which such officer is a house-keeper, and for which he receives a salary of 40*l.* a year by monthly payments from the government, and is removable by the commissioners at pleasure, is not rateable to the poor in respect of such salary, *R. v. Shaftesbury*, i. pl. 160.
2. The officers of the glass-works at Bristol are not rated to the poor in respect of their salaries, *Id. ibid.*
3. Officers in the navy, army, customs, or excise, are not rateable to the poor for their salaries, *R. v. White*, i. pl. 139.
4. The clerk of a merchant is not rateable to the poor for his salary, *Id. ibid.*
5. The master of a trading vessel, who re-

- ceives a salary from his owners, is not rateable for such salary, *Id. ibid.*
6. But it is said the officers of *Chelsea Hospital* are rateable for the houses in which they dwell in the Hospital; but this is not with respect to their salaries, but because the apartments in which they reside are considered their dwelling-houses, *Ayr v. Smallpiece*, i. pl. 154.
7. But a house within the limits of an hospital appropriated to an officer of the hospital for the time being is not assessable to the land-tax, *Harrison v. Bullock*, i. pl. 157 n.

SCHOOL MASTER.

1. The office of school master to a charity school established by private donation, appointing ten pounds a year to be paid, under the direction of the vicar of the parish, to the school master, is not such an office as will give a settlement by serving it a year, *R. v. Milbourne*, ii. pl. 239.
2. The master of a free-school appointed by the minister and inhabitants of the parish under a charitable trust, whereby a house, garden, &c. were assigned "for the habitation and use of the master and his family, without payment of any rent, income, gift, or sum of money, or other allowance whatsoever," for teaching of ten poor boys of the inhabitants, is rateable to the poor for his occupation of the same, *R. v. Catt*, i. pl. 205.
3. For wherever persons of any description are in possession of property from which they derive a benefit to themselves, they are considered as occupiers, and are rateable to the poor, *R. v. Munday*, i. pl. 211, text.

SEAMEN.

See APPRENTICES, MILITIA-MEN, AND SOLDIERS.

SERVANTS.

1. Servants, for the purpose of gaining settlements, must at the time of hiring be unmarried, and have neither child nor children, 3 W. & M. c. 11. § 6.
2. And they must not only be hired for a year, but must serve a whole year, 8 & 9 W. 3. c. 30.
3. Servants cannot gain a settlement by hiring and service to a certificated master, 9 & 10 W. 3. c. 11.
4. If a servant agree for so much a month, and to be at liberty to depart from the service at a month's wages or a month's warning, he is a monthly servant, ii. pl. 295.
5. A master cannot deprive a servant of a

settlement by living out of his service on account of ill health, *R. v. Hardingham*,

- ii. pl. 422.
6. S. P. *R. v. Sharrington*, ii. pl. 449.
7. But the illness must not be of her own seeking; for if she be with child, she may be discharged, *R. v. Marlborough*, ii. pl. 423.
8. S. P., *R. v. Brampton*, ii. pl. 444.
9. S. P., *R. v. Welford*, ii. pl. 446.
10. S. P., *R. v. Westmean*, ii. pl. 447.
11. S. P., *R. v. North Cray*, ii. pl. 450.
12. S. P., *R. v. East Kennet*, ii. pl. 452.
13. S. P., *R. v. Whittlebury*, ii. pl. 463.
14. S. P., *R. v. Sudbroke*, ii. pl. 469.
15. But a servant, who is sickly by the visitation of God, shall be considered as continuing in the service of her master, ii. pl. 424.
16. A master cannot reasonably refuse a going away servant a necessary absence for the purpose of seeking another place, *Id. ibid.*
17. S. P., *R. v. Clayhydan*, ii. pl. 459.
18. An absence on account of sickness does not dissolve the relation of master and servant, *R. v. Osleworth*, ii. pl. 432.
19. S. P., *R. v. Christchurch*, ii. pl. 436.
20. S. P., *R. v. Maddington*, ii. pl. 380.
21. The bankruptcy of a master shall not prevent the settlement of the servant, *R. v. St. Andrew, Holborn*, ii. pl. 457.
22. Nor does the insanity of the servant, *R. v. Sutton*, ii. pl. 461.

SESSIONS.

1. Quarter sessions for the Michaelmas quarter shall, in every year, be holden for every county, riding, division, city, borough, and place within *England* and *Wales*, and for *Berwick upon Tweed*, in the first week after the 11th day of *October*, 54 G. 3. c. 84. § 1.
2. Not to extend to *London* and *Middlesex*, *Id. §. 2.*
3. Courts of quarter sessions or general sessions of the peace, may appoint two or more justices to form a court constituted apart from them, 59 G. 3. c. 28. § 1.
4. Regulations made for the apportionment of business, need not be renewed at each succeeding session, 59 G. 3. c. 28. § 2.
5. Clerk of the peace to appoint a person to record the proceedings of such separate court, 59 G. 3. c. 28. § 3.
6. In all corporations and franchises, not having more than six justices, parties may appeal to general or quarter sessions of the county, 1 G. 4. c. 36.
7. By 43 Eliz. c. 2. § 8. "the quarter sessions, holden in towns, cities, and corporations, shall have exclusively the same powers

- with respect to the appointment of overseers, and the regulation, maintenance, relief, and removal of the poor, as is given to county sessions.
8. A warrant to arrest the party, "to the end that he may become bound, &c. to appear at the next sessions," &c. means the next sessions after the arrest, and not after the date of the warrant; therefore the officer executing it may justify an arrest after the sessions next ensuing the date of the warrant, *Mayhew v. Parker*, ii. pl. 967.
 9. The sessions, on appeal, are the proper judges whether the persons selected by the justices are proper persons to be appointed overseers, *R. v. Gayer*, i. pl. 14.
 10. The sessions also are the judges whether the place for which separate overseers are appointed, is or is not a *vill*; and if they adjudge the place to be a *vill*, the court of king's bench is precluded from going into the question, *R. v. Ronton Abbey*, i. pl. 62.
 11. So where a wood consisted of beech trees, and the sessions adjudged it not rateable to the poor, for that *beech*, by the custom of the country, was *timber*, the Court refused to enquire into the fact, *R. Minchin v. Hampton*, i. pl. 158.
 12. So where the sessions found that the master gunner at *Seaford* was the occupier of the battery-house which was the property of the crown, the court held that that fact fixed his liability to be rated, *R. v. Hurdie*, i. pl. 191.
 13. So also the sessions are the sole judges whether a poor's rate is equal or unequal, *R. v. Weobley*, i. pl. 124.
 14. And the court will not interfere in a fact found by the sessions, although they appear to have drawn their conclusion from wrong premises, *R. v. Minchin Hampton*, i. pl. 158.
 15. The sessions cannot state a case merely for the purpose of taking the opinion of the court, *R. v. Hill*, i. pl. 289.
 16. By 17 G. 2. c. 37. "the general quarter sessions, in case of disputes respecting the rates to be assessed by different parishes on adjoining waste lands, shall cause the lands to be fairly assessed in such parishes as they shall see proper."
 17. By 17 G. 2. c. 38. § 7. "the general or quarter sessions may hear appeals against distresses taken for poor's rates."
 18. By 9 G. 1. c. 7. § 3. and 28 G. 2. c. 49. "county sessions cannot be held in cities or towns, which are counties of themselves."
 19. By 17 G. 2. c. 38. § 4. "the next general or quarter sessions may hear appeals respecting overseers and the poor's rate, on the appellant giving reasonable notice; but if it shall appear to the sessions that such notice was not given, they may adjourn the appeal to the next quarter sessions, and then and there finally hear and determine the same."
 20. By 17 G. 2. c. 38. § 5. "if persons be aggrieved in any corporation or franchise who have not four justices, the sessions of the county may hear the appeal."
 21. By 5 G. 2. c. 19. "the sessions may cause any defect in form in any judgment or order, by a justice or justices of the peace, to be amended." See *R. v. Matthews*, i. pl. 288.
 22. The sessions in quashing a poor rate, and ordering a new rate to be made, must state their appellate jurisdiction, *Garret v. Foot*, i. pl. 276.
 23. The sessions cannot make an original order respecting a rate, *R. v. Aberford East*, i. pl. 278.
 24. The 41 G. 3. c. 23. § 1. does not give the court of king's bench the power of amending a poor's rate, *R. v. Milton*, ii. pl. 1007.
 25. The sessions must execute their authority with regard to overseers' accounts in the same manner as two justices must do, *R. v. Hedges*, i. pl. 322.
 26. The sessions cannot, on an appeal from the allowance of overseers' accounts, order the overseers to refund monies improperly charged, *R. v. Moulsworth*, i. pl. 321.
 27. But the sessions may order the overseers to pay over such balance as appears to the court to be due, *R. v. Hedges*, i. pl. 322.
 28. And the sessions may refer the accounts to the first two justices to whom they were submitted, though they have been altered by other justices, *R. v. Townsend*, i. pl. 322.
 29. The sessions cannot receive an appeal from overseers' accounts, if they have not been previously before the justices, *R. v. Bartlett*, i. pl. 325.
 30. Therefore they cannot make an order upon ex-overseers to pay over money to their successors by an original order in the first instance, *R. v. Whitecar*, i. pl. 326.
 31. The sessions may order the one of several joint overseers, acting separately for different districts, to make distribution of the balance in his hands for the benefit of the other districts, to his co-overseers, *R. v. Borough of Banbury*, i. pl. 339.
 32. By the 43 Eliz. c. 2. § 3. "if there are no parishes within the hundred, which, in the opinion of the two justices, are fit to be taxed in aid, the sessions may rate any other parishes within the county."

33. The sessions therefore cannot rate a parish within the hundred in aid, *Anonymous*, i. pl. 401.

34. And the order rating parishes within the county, can only be made by THE SESSIONS, *Anonymous*, i. pl. 412.

35. And the sessions may make such order, though the two justices have not adjudged the parishes within the hundred to be incapable, *R. v. Percival*, i. pl. 415.

36. By 43 Eliz. c. 2. § 7. "the general quarter sessions may order the father and grandfather, and the mother and grandmother, if of sufficient ability, to maintain a poor relation."

37. But our parish officer may levy the penalty, and, in defect thereof, two justices may grant a warrant of distress.

38. The sessions of the place in which the party on whom the order is made dwells, alone have jurisdiction, *R. v. Reeve*, i. pl. 421.

39. The sessions cannot delegate their authority upon this subject, *R. v. Humphries*, i. pl. 422.

40. And this order of maintenance can only be made at a general quarter sessions, and not at a quarter sessions, *R. v. Charnock*, i. pl. 424.

41. But although the authority of THE SESSIONS upon this subject is original and exclusive, yet they may make an order on the appeal or application of the overseers, *R. v. Kempton*, i. pl. 426.

42. By 5 G. 1. c. 8. "the quarter sessions, on the confirmation of the order made by two justices to seize the property of such persons as shall abandon their families to the parish, may order the parish officers to sell the goods, and receive the rents and profits," &c.

43. The quarter sessions may call the parish officers to account for the monies received.

44. The jurisdiction of sessions respecting vagrants. See tit. VAGRANTS.

45. By 4 Eliz. c. 2. § 5, "the general quarter sessions may make order to enable the overseers, with the consent of the lord of the manor, to build work-houses on waste land within a parish."

46. By 14 Car. 2. c. 4. § 1. "the general sessions may order a stock to be provided for setting poor prisoners at work; and make order, not above sixpence a week, on any person, towards the premises, having regard to the respective values of the sessions and parishes."

47. By 3 W. & M. c. 11. § 11. "the quarter sessions may make an order of relief."

48. And the sessions is not noticed in the 19 G. 1. c. 7, which restrains a single justice from making an order of relief until

good cause for it be made appear to him on oath, and the overseer be summoned to show cause to the contrary.

49. But it seems, that this must be understood with respect to the sessions, as well as the single justice, *R. v. Winship*,

i. pl. 466. text.

50. The sessions may make an original order for the relief of a poor person, *R. v. Winship*, i. pl. 466.

51. The sessions and the single justice have a concurrent jurisdiction in making orders for the relief of the poor; and therefore against such an order there cannot be an appeal, *R. v. North Shields*, i. pl. 468.

52. By 18 G. 3. c. 19. § 5. "the sessions, on appeal by the overseers, shall finally examine and determine on the justness of constables' accounts for monies expended in relieving the poor," &c.

53. The sessions are to audit the accounts of monies furnished for the relief of the families of militia-men serving in different parishes from that in which their families reside.

54. By 13 & 14 Car. 2. c. 12. § 19. "the sessions may order the churchwardens and overseers to dispose of, by sale or otherwise, so much as they shall think fit of the goods, and to receive so much of the rents and profits of the estate of every putative father, or lewd mother, as such churchwardens, &c. shall have seized under an order of two justices."

55. The sessions may proceed originally on the stat. 3 Car. 1. c. 4. § 15. respecting bastards; and in such case, may commit the reputed father for disobeying the order; but not, when they proceed by way of appeal under 18 Eliz. c. 3., *R. v. West*, i. pl. 521.

56. The sessions cannot make an original order on the same reputed father, after having discharged an order made on him by a justice of the peace, *R. v. Tenant*,

i. pl. 524.

57. But the sessions, after discharging the order of justices on the reputed father, may make an original order on another person, *Wood's case*, i. pl. 607.

58. The sessions cannot make an order on a constable who has suffered a putative father to escape, to pay so much in gross towards the expences the parish have been at, and so much per week for the maintenance of the child, *R. v. Ridge*, i. pl. 609.

59. A second sessions cannot vacate an order made by two justices and confirmed by a former sessions, *R. v. Arundel*, i. pl. 612.

60. By 5 Eliz. c. 4. § 35. "the sessions may, by writing under their hands and seals

- discharge an apprentice of his apprenticeship, stating the cause thereof."
61. The sessions have original authority to discharge apprentices, *R. v. Johnson*, i. pl. 676.
S. P., R. v. Davis, i. pl. 681.
S. P., R. v. Heaceman, i. pl. 683.
62. And this may be done as well on the complaint of the master as of the apprentice, *Hawksworth v. Hilary*, i. pl. 667.
63. The sessions, on discharging an apprentice, may order a portion of the apprentices-fee to be returned; for this is incidental to their power to discharge, *Du Hamel's case*, i. pl. 666.
64. Although the trade to which the apprentice is bound is not one of those mentioned in the 5 Eliz. c. 4., *R. v. Anice*, i. pl. 682.
65. But this order must be under the hands and seals of four justices, *Anonymous*, i. pl. 673.
66. The sessions cannot take cognizance of an assignment of indentures; for this would be to determine on the validity of a deed, *R. v. Barnes*, i. pl. 693.
67. The sessions are judges who are proper persons to receive parish apprentices, *Mincham's case*, i. pl. 702.
68. By 16 G. 2. c. 18. "the justices in sessions who are rated or chargeable to the levies of the parish, cannot vote in the determination of any appeal from any order, matter, or thing relating to such parish where such justices are taxed or chargeable."
69. They cannot vote, if rated or chargeable in either of the contending parishes, *R. v. Farpole*, ii. pl. 937.
70. Upon an appeal against an order for the allowances of overseers' accounts, a magistrate, a rated inhabitant of the parish, cannot vote, either on the determination of the appeal, or on a question as to granting a case for the opinion of this court, *R. v. Gudridge*, ii. pl. 939.
71. The sessions cannot make an original order of removal, *R. v. Bond*, ii. pl. 922.
72. Therefore if two justices make an order of removal which is not appealed against; but the sessions make an order to confirm it, their confirmatory order is void, for it is a voluntary, and, as it were, extrajudicial act of the sessions to confirm an order that is not complained of, *R. v. Leverington*, ii. pl. 935.
73. The sessions, on hearing an appeal against an order of removal, may adjudge the pauper to be settled in any of those parishes that are parties to the order, *R. v. Colliton*, ii. pl. 923.
74. The sessions may vacate an order of removal by implication, *R. v. Hartfield*, ii. pl. 924.
75. The sessions cannot, at a subsequent sessions, make an order to review a case on which they determined at a preceding sessions, *R. v. Cuckfield*, ii. pl. 925.
76. The sessions may affirm or quash an order of removal, but they cannot supersede an original order, and make a new order, *R. v. Oswell*, ii. pl. 926.
77. Where an order of removal has been executed, and by consent of the removing parish and the magistrates making it, it is superseded and the paupers taken back, it is in the discretion of the sessions to enter an appeal against it or not, according as they may think that justice requires it, in order to compel the respondents to pay the costs of maintenance, &c. incurred by the appellants before the order was suspended, *R. v. Norfolk (Justices)*, ii. pl. 938.
78. The sessions, on discharging an order of removal, can only order the pauper to be sent back to the respondent parish, but they cannot adjudge his settlement in a third parish, *R. v. Amner*, ii. pl. 927.
79. But in a subsequent case it is said that the sessions have no authority to send a pauper back, *R. v. Milverton*, ii. pl. 928.
80. The sessions cannot make a new order vacating a former order made at any time during the same sessions, *St. Andrew v. St. Clement's*, ii. pl. 929.
81. Or confirm an order that has been previously quashed during the sessions, *Buttersea v. Westham*, ii. pl. 930.
82. Nor have they upon this subject any jurisdiction, except on appeal, *R. v. Leverington*, ii. pl. 936.
83. The sessions, if the magistrates are equally divided, cannot make any order but ought to enter a continuance till the next sessions, in order that the court may again proceed on the appeal, *R. v. Walmoreland*, ii. pl. 931.
84. Upon an appeal against an order of removal, the justices at sessions were equally divided in opinion upon a question of fact, on which the settlement of the pauper depended; the sessions think that it lay on the respondent parish to establish their case to the satisfaction of a majority of the court, quashed the order of removal: the sessions having decided the case, this court refused a mandamus, *R. v. Monmouthshire (Justices)*, ii. pl. 101.

Quare, If the sessions ought to be adjourned instead of quashing the order *Id. ibid.*

85. The authority of sessions is final as to matters of fact, and therefore a bill of exceptions will not lie to justices, on hearing an appeal against an order of removal, *R. v. Preston*, ii. pl. 932.
86. The sessions may, by 5 G. 2. c. 9., alter the name of the place of settlement, if the error appear to be the mistake of the clerk, *R. v. Harrow*, ii. pl. 953.
87. The sessions cannot amend an order in matter of substance which requires examination of witnesses, but only in defects of form appearing on the face of the order, *R. v. Great Bedwin*, ii. pl. 934.
88. The sessions, with the consent of the parties, may refer the consideration of an appeal to arbitration, *R. v. Northampton*, ii. pl. 936.
89. The sessions may dismiss an appeal for want of such notice as their practice requires, *Anonymous*, ii. pl. 943.
90. The sessions may adjourn the hearing of, but cannot quash, an order for want of notice, *Id. ibid.*
91. The sessions are bound to receive an appeal, although no notice has been given, *R. v. Huntingdonshire*, ii. pl. 948.
92. It has been held that the quarter sessions are not bound to receive and adjourn the hearing of an appeal against an order of removal at the next sessions, if they think the appellants had sufficient time to come prepared to try it, and to give notice to the respondents, *R. v. North Riding, Yorkshire*, ii. pl. 949.
93. But it has been since held that if an appeal against an order of removal be lodged, and the sessions are of opinion that reasonable notice has not been given, they cannot dismiss the appeal, but are bound to adjourn it to the next sessions; for the 6 G. 1. c. 7. § 8., which enacts that no appeal from any order of removal shall be decided upon, unless reasonable notice be given, of which the justices in sessions are to judge, expressly says, "that if it shall appear to the justices that reasonable notice was not given, then they shall adjourn the appeal to the next quarter sessions." *R. v. Justices of Buckinghamshire*, ii. pl. 950.
94. The quarter sessions may adjourn the hearing of an appeal from order of removal, *R. v. King's Langley*, ii. pl. 973.
95. The sessions cannot be adjourned beyond the time mentioned in the statute 3 Hen. 6. c. 4. *E. v. Grinoc*, ii. pl. 974.
96. The sessions in making an order of adjournment must state the time when the original sessions commenced, *R. v. St. Michael, Ipswich*, ii. pl. 975.
- Same point, *R. v. Harrowby*, ii. pl. 976.
- Same point, *R. v. Reptonshall*, ii. pl. 977.
97. So also if the sessions make an order referring a question to the determination of a judge of assize, the appeal must be continued by a proper adjournment, *R. v. Heddingham Sible*, ii. pl. 978.
98. The sessions may adjourn an appeal to an adjourned sessions, *R. v. Stansfield*, ii. pl. 979.
99. But the sessions cannot make any adjournment without entering a proper continuance, *R. v. Polstead*, ii. pl. 980.
100. The justices are bound by stat. 9 G. 1. c. 7. § 8. to receive and adjourn an appeal made to the next sessions, after an order of removal made against such order if no notice have been given to the respondent, though they should be of opinion that the order was executed in sufficient time before the sessions to have enabled the appellant to give reasonable notice of their appeal to the respondents, *R. v. Staffordshire (Justices)*, ii. pl. 951.
101. The adjournment of a sessions must be made by the same number of justices that are necessary to hold a sessions, *R. v. Westington*, ii. pl. 981.
102. If the justices at sessions are equally divided, and no order made not the sessions adjourned, an order cannot be made at a subsequent sessions, on an appeal lodged at the former sessions, *Bodmin v. Warlgen*, ii. pl. 982.
- Same point, *R. v. Justices of Westmoreland*, ii. pl. 983.
103. The court will not grant a mandamus to the justices of sessions to hear an appeal against an order of removal, after judgment given by them, and entered by the clerk of the peace for quashing the order, upon the ground that the justices at sessions were divided in opinion, and that the judgment was entered by mistake instead of an adjournment of the appeal, *R. v. Justices of Leicestershire*, ii. pl. 1006.
- The justices at sessions may alter their judgment, during the continuance of the sessions, *Id. ibid.*
104. When by a charter the magistrates of a borough which was a county of itself held only general sessions twice a year, and not quarter sessions: Held, that an appeal against an order of removal might be made to the next general sessions of the peace for such borough, *R. v. Carmarthen*, ii. pl. 971.
105. An order of removal was dated 1st August 1814, and an order of suspension indorsed thereon, in consequence of the sickness of the pauper, and a copy of such

- order and indorsement was in 1814 served upon the appellants, but the original not produced at the time of serving such copy, and subsequently in 1815 another part of the order and indorsement executed by the same justices, but bearing date in August 1814, was served upon the appellants. The pauper was not removed till 1819, when an appeal was duly entered: Held, that the services of the original order of removal in 1814 and 1815 were both defective, and that the appeal was made in time, notwithstanding 49 G.3. c. 124. § 2, *R. v. Alnwick*, ii. pl. 972.
106. The sessions, in stating a case for the opinion of the court, cannot make a special conclusion, *Anonymous*, ii. pl. 984.
107. But although they must determine one way or the other, yet they need not state the reason of their judgment, *South Cadbury v. Braddon*, ii. pl. 985.
108. But if they state a bad reason for their judgment, the court will take notice of it, *R. v. Tedford*, ii. pl. 986.
109. The sessions ought not to state the evidence from which they infer the facts stated in a special case, *Id. ibid.*
110. But they should state the facts themselves; for a special order of sessions is considered in the nature of a special verdict, which is not to state the evidence of the fact, but the fact itself, *R. v. Martley*, ii. pl. 988.
111. *Qu.* If they state all the circumstances from which their conclusions are drawn, Whether the court of king's bench will examine the propriety of their conclusions as to the fact of fraud? *R. v. Tedford*, ii. pl. 986.
112. The fact of fraud must be positively found by the sessions; for the court of king's bench will not infer that fact from evidence stated in the case, *R. v. Weston*, ii. pl. 989.
113. The sessions cannot be compelled to state a special case, *R. v. Oulton*, ii. pl. 987.
114. Nor will the court permit them to raise a general question by omitting to state particular circumstances belonging to the case, *R. v. Hill*, i. pl. 289.
115. But if the sessions order a special case to be made, and before it is settled the sessions is inadvertently adjourned, the court of king's bench will grant a *mandamus* to compel them to proceed in the appeal, *R. v. Justices of Sussex*, ii. pl. 1009.
116. The sessions on a case being sent back to be re-stated, ought to proceed as in an entire new business, *R. v. Page*, ii. pl. 992.
117. For they ought to consider it like a new trial, *R. v. Bramley*, ii. pl. 998.
118. But in such case they are not necessarily obliged to hear new evidence, where the only defect in the case is their not having drawn any conclusion from the facts stated, *R. v. Bray*, ii. pl. 993.
119. But the sessions may hear new evidence, *R. v. Hitcham*, ii. pl. 991.
120. The court will not send a case back to be rectified by the minutes of the sessions, if the fact required to be answered be not clearly stated, *R. v. Bradenham*, ii. pl. 990.
121. Nor will the court send a case to be re-stated, merely on account of the sessions having improperly rejected hearsay evidence, *R. v. Nutley*, ii. pl. 994.
122. Nor on an affidavit that the clerk of the peace did not state the evidence truly, *R. v. Burgh*, ii. pl. 993.
123. But if they state evidence instead of facts, the court will send it back, *R. v. Rainham*, ii. pl. 997.
124. The court will not infer fraud from the circumstances stated in a special case; for fraud is a fact which must be found by the sessions, *R. v. Llanbedergoch*, ii. pl. 999.
125. And that as well as all other facts found by the sessions are conclusive, *R. v. Llanwinio*, ii. pl. 996.
126. The court of king's bench has no jurisdiction to review the judgment of the quarter sessions except on a case sent up for their consideration; and therefore where the sessions, having heard the witnesses on one side, had refused to hear those on the other side in an appeal, on the ground that their testimony had been prefaced by observations on the part of the advocate contrary to their usual practice, the court refused to grant a *mandamus* to re-hear the appeal, *R. v. Carnarvon (Justices)*, ii. pl. 1008.
127. The court of king's bench have no jurisdiction to grant a *mandamus* to magistrates to make an order of maintenance on a particular parish, *R. v. Mildeser (Justices)*, ii. pl. 1009.
128. If the sessions confirm an order of justices, the court of king's bench will not *quash* such order, but will *quash* the order of sessions, and direct the sessions to notice the order of two justices, *R. v. Yarpole*, ii. pl. 1004.
129. If an order of removal be confirmed at the sessions, and both orders be afterwards removed into the king's bench by *certiorari*, on a case reserved, and the court disapprove of the orders for want of jurisdiction of the removing magistrates

appearing on the face of the original order, the court will quash both the orders without remitting the matter back to the sessions to quash the original order, for the purpose of enabling them to give a maintenance under 9 G. 1. c. 7. § 1.; and at any rate they will not admit an application for amending their judgment for quashing both orders made in the term subsequent to the judgment so pronounced, *R. v. Moor Critchell*,

ii. pl. 1005.

130. The sessions may be compelled by mandamus to exercise their discretion respecting the allowance of costs and charges on an appeal, *St. Mary, Nottingham v. Kirklington*,

ii. pl. 1012.

131. The sessions, in making an order for costs and charges, need not state how much was expended, *Maidenbradley v. Wallingford*,

ii. pl. 1013.

132. The sessions cannot order costs on the mere adjournment of an appeal, *R. v. Dunfield*,

ii. pl. 1014.

133. So if a person give notice of his intention to appeal against a poor rate, but do not enter his appeal, the sessions cannot award costs to either party under 17 G. 2. c. 38., *R. v. Justices of Essex*, ii. pl. 1017.

134. The sessions cannot direct costs to attend the event of another presumed appeal, *R. v. Great Chart*,

ii. pl. 1015.

SETTLEMENT.

1. All enactments and provisions in respect of gaining settlements contained in local acts repealed, 54 G. 3. c. 170. § 1.

2. Person born in any poor-house, or house of industry belonging to united parishes, shall be deemed to be born in the parish, &c. by whom the mother of such person was sent, 54 G. 3. c. 170. § 3.

3. Persons born in prisons or houses licensed for reception of pregnant women, not to gain settlement thereby, 54 G. 3. c. 170. § 2.

4. Prisoners for debt or contempt, not to gain settlements while in custody, 54 G. 3. c. 170. § 4.

5. No gate-keeper, or person residing in any toll-house, to gain a settlement thereby, 54 G. 3. c. 170. § 5.

6. No person maintained in any charitable institution, to gain any settlement by residence therein, 54 G. 3. c. 170. § 6.

SETTLEMENT BY BIRTH.

I. Of illegitimate Children.

II. Of legitimate Children.

I.

Of illegitimate Children.

1. The place of birth is in all cases the *primâ facie* of settlement, *R. v. Heaton Norris*, ii. pl. 30 n.

2. A bastard is *ex necessitate* settled in the parish or place where it is born or first found, for being *nullius filius*, it could not otherwise be provided for, *Whitechapel v. Stepney*, ii. pl. 1.

3. But to this rule there are several exceptions; for if any fraud shall be used to procure the birth of a bastard in any particular parish, such child shall not be *primâ facie* settled in the parish in which it was born, but in the parish from whence its mother was fraudulently and collusively removed, *Tewksbury v. Twining*, ii. pl. 2.

4. So also if an unmarried woman big with child be removed, and, pending an appeal against such order, be delivered of a bastard child, such child is not settled where born, if such order be afterwards quashed, but is settled in the parish from which its mother was so removed, *Boreham v. Waltham*, ii. pl. 4.

5. So also if a single woman with child be unjustly removed from one parish, and be delivered of a bastard in the other parish, pending the order, though before appeal, such bastard, on the order being reversed, is not settled where born, *Westbury v. Coston*, ii. pl. 7.

6. So also if the parish-officers are carrying a pregnant woman from one place to another by virtue of an order of removal, and she is delivered on the road, *in transitu*, of a bastard child, such bastard is not settled in the parish where born, but shall go with the mother to the parish to which she is removing by virtue of the order, *R. v. Jane Grey*, ii. pl. 8.

7. So also a bastard born after an order of removal is made out, and before actual removal, is not by such birth settled where born, but shall go to the mother's parish, *R. v. Ideford*, ii. pl. 9.

8. So also if a single woman with child be removed from A. to B., and privately return into the parish of A., and is there delivered of a bastard child, the settlement of such child is in B., and not in the parish where it is born, *R. v. Landinabac*.

1 Str. 476.

9. So by 35 G. 3. c. 101. § 6. bastards born during the suspension of an order of removal, shall be settled in the mother's parish.

10. So also if a woman big with child be sent to the house of correction, and be there delivered of a bastard, the child shall be

- sent to the parish from which the mother was sent to the house of correction, *Stackley v. Whitborn*, ii. pl. 3.
11. So also a bastard born in a *county gaol*, to which the mother had been committed for safe custody, is not settled where born, *Elling v. Hereford*, ii. pl. 10.
12. An illegitimate child, born in an extra-parochial place, does not follow the settlement of its mother, *R. v. St. Michael's Leicester*, ii. pl. 22.
13. And bastard children born in workhouses belonging to parishes united under 9 G. 1. c. 7. §. 4. and locally situated in a *third parish*, it is said, are not settled in such third parish, but in the parish from which its mother, the pauper, was sent to such workhouse, *R. v. St. Peter and St. Paul*, i. pl. 483.
14. So by 13 G. 2. c. 29. for regulating the *Foundling Hospital*, it is enacted, "that no child received into such hospital shall, by virtue thereof, gain any settlement in the parish."
15. So by 17 Geo. 2. c. 5. § 25. "bastards born in the streets, &c. where the mother is apprehended while wandering and begging in a *state of vagrancy*, shall not be settled where born, but shall have the mother's settlement."
16. So also by 13 G. 3. c. 82. § 5. "bastard children born in *lying-in hospitals* shall not be settled in the parish where such hospital is situated, in consequence of such birth, but shall follow the mother's settlement."
17. So also by 20 G. 3. c. 36. "bastard children, born in the *house of industry* of any hundred or other district incorporated by act of parliament, shall follow the mother's settlement."
18. So by 33 G. 3. c. 54. § 25. bastards born under a certificate from a *benefit society*, shall be settled in the mother's parish.
19. But if an unmarried woman with child come accidentally into one parish, and remove to another by the advice of some of the parishioners, and be there delivered of a bastard child, it shall be settled where born, *Masters v. Child*, ii. pl. 5.
20. So also if a woman lodge in a parish, and be delivered of a bastard child, the child is settled in such parish, although it do not appear that the mother had gained a settlement, *R. v. Spitalfields*, ii. pl. 6.
21. So also a bastard is settled where born, though its parents are dead, and they were, during the whole of their lives, reputed to be man and wife, *R. v. St. Peter's, Worcestershire*, ii. pl. 12.
22. Even if the child be born under a marriage *de facto*, if it appear by fair conclusion that it was a bastard; as if its mother's former husband were alive, *R. v. Lubbenham*, ii. pl. 18.
23. So also a bastard born on the road while the mother is endeavouring to reach her own parish, without fraud, is settled where born, *R. v. Aspley*, ii. pl. 17.
24. The bastard of a certificate person is settled in the place of its birth; for it is not such issue as will follow the settlement of its father or mother, neither is such bastard *his* or *her* child, within the intention of the statute 8 & 9 Will. 3. c. 30. *R. v. Hilton*, ii. pl. 13.
25. Even although the certificate undertake that the certifying parish shall provide for the certificated person and *her child*, with which she was then pregnant; for the words *her child* must be taken to mean a legitimate child then in being, *R. v. Wyke*, ii. pl. 14.
26. But if a certificate expressly undertake to provide for the child that the woman certificated is then pregnant with, such child, though born a bastard, shall be settled in the mother's parish, and not in the parish where born, *R. v. Ipsley*, ii. pl. 15.
27. So where a child is born a bastard, and its parents afterwards intermarry, and the father procures a certificate for himself, his wife, and *his child*, such bastard shall have its father's settlement, and not be settled where born, *R. v. Tostock*, ii. pl. 42.
28. But a bastard born several years after a certificate engaging to receive the child the mother was then pregnant with, and all other children she might afterwards have, and stating her to be an unmarried woman, is settled where born, *R. v. Mathon*, ii. pl. 19.
29. But now by 35 G. 3. c. 101. every unmarried woman with child may be removed as actually chargeable, although residing in the parish under a certificate, *R. v. Great Yarmouth*, ii. pl. 694.
30. But although the place of birth be the settlement of a bastard, yet while under *seven years* such child shall be removed for *nurture* to the place of its mother's settlement, and be there kept and maintained at the expence of the parish where born, *Steffeth v. Walford*, ii. pl. 11.
31. Therefore where a woman went with a certificate from *Hemlington* to *Darlington*, where she had two bastard children, with which, while they were under seven years of age, she was removed to *Hemlington* where two justices made an order on *Darlington* for the maintenance of the said two children, and it was held that they had a right so to do, *Darlington v. Hemlington*, ii. pl. 16.

II.

Of legitimate Children.

32. The place of birth is also *prima facie* the place of settlement of legitimate children, until the settlement which such children inherit by parentage can be discovered, *Giplegate v. St. Saviour's*, ii. pl. 27.
33. Therefore, on a question respecting the settlement of a married woman, if the appellants prove that the pauper was born in the parish of the respondents, this is good *prima facie* evidence, so as to oblige the respondents to shew that the pauper had gained a different settlement, *R. v. Woodford*, ii. pl. 29.
- Same point, *R. v. Heaton Norris*, ii. pl. 30 n.
34. But birth is only *prima facie* evidence of settlement; for where the sessions had decided in favour of a settlement in A., by which the pauper's father was proved to have been relieved while resident in another parish forty years before the decision, and antecedent to the pauper's birth, and the only evidence to oppose this being the pauper's own birth in B., the order of sessions was confirmed, *R. v. Wakefield*, ii. pl. 31.
35. The settlement by birth may be proved by the copy of the parish-register of christenings, and by identifying the person, *R. v. Creech St. Michael's*, ii. pl. 28.
36. For the primary settlement by birth may be wanted by a new settlement by parentage, although the child be under seven years of age, *Cumner v. Milton*, ii. pl. 26.
37. But the place of birth shall be the place of settlement of a legitimate child, though it appear that the father is still living, and had served two years in a different parish; it is not *constat* that such service was under taking for a year, *R. v. Whisley*, ii. pl. 30.
38. The place of birth is indeed in all cases *prima facie* place of settlement, *R. v. Heaton Norris*, ii. pl. 30 n.
39. It is also the place where a legitimate child is first found, is the place of its legal settlement, until the place of its birth or its derivative settlement can be discovered, *Whithead v. Stepney*, ii. pl. 24.
40. Therefore where the mother of a young child was executed for felony, and neither the place of the child's birth nor of the mother's settlement could be found, the child was held to be settled in the parish where the mother was apprehended, *Anon.*, ii. pl. 25.
41. So also if the mother of a child born in one parish die in another while she is

- passing to a third, such child shall not be settled in the parish where it was left destitute by the death of its mother, but shall be settled where it was born, *The case of Clavelly v. Burton*, ii. pl. 23.
42. By 8 & 9 W. 3. c. 30. "the legitimate children of certificate persons shall not gain a settlement by birth in the certificated parish.
43. A child, eight years old, born in England, but both whose parents were Irish, without any settlement in England, and whose mother, after the death of her first husband, had married a settled inhabitant of the parish of A., is removable, if chargeable, to the place of his birth, and is not within the 59 G. 3. c. 12. § 35. *R. v. Great Clacton*, ii. pl. 32.

SETTLEMENT BY PARENTAGE.

- I. Of the Father.
II. Of the Mother.
III. Of Emancipation.

I.

By the Settlement of the Father.

1. The father's settlement is the settlement of his legitimate children, in whatever place such children may be born or dropped, *Corwell v. Shillingford*, ii. pl. 57.
2. And a legitimate child, though born after the death of its father, shall inherit his settlement, *R. v. Clifton*, ii. pl. 38.
3. So also the father's settlement shall be conferred on his legitimate child, although such child be born an idiot, *Hard's case*, ii. pl. 54.
4. And a legitimate child may be removed to the place of his father's settlement, although the father is alive, and do not reside there, *R. v. Iron Acton*, ii. pl. 40.
5. For the settlement of the father is the settlement of his children, although he reside elsewhere at the time of, and ever after, their birth; and the children may be removed to such settlement after the father's death, although they were never there during his lifetime, *St. Giles, Reading v. Eversley, Blackwater*, ii. pl. 39.
6. The father's settlement communicated to his children is not altered or destroyed by the marriage of his widow, *R. v. Sazmundham*, ii. pl. 35.
7. But if the father remove into a different parish, and there gain a new settlement, his children under the age of seven years, and such other of them as have not gained settlements in their own right, shall have the settlement thus newly acquired, *R. v. Cumner*, ii. pl. 36.

8. But it is incumbent on the parish to which such *nurse children* are removed, to shew that their *derivative settlement* has been changed by a new settlement subsequently acquired; and therefore it has been held, that *nurse children* may be removed without stating either the death or the settlement of their parents, *R. v. Bucklebury*,
ii. pl. 43.
 9. See also *R. v. Barton Turfe*, ii. pl. 52.
 10. For proof of the father's settlement is sufficient to establish the settlement of his children in the same parish, if nothing appear to contradict it, *R. v. Stone*,
ii. pl. 44.
 11. Therefore evidence that the pauper's father had been relieved forty years before by the parish of *A.*, while he resided in the parish of *B.*, is evidence of the pauper's settlement in *A.*, although it appear that the pauper was born in another parish, *R. v. Wakefield*,
ii. pl. 31.
 12. If the father and mother of a legitimate child be both foreigners, and neither of them have gained a settlement, it follows that both they and their children must be maintained by the parish where they are found, *Coured's case*,
ii. pl. 35.
 13. The settlement of a person attainted, acquired before this attainder, is communicated to his after-born children, *R. v. St. Mary Cardigan*,
ii. pl. 45.
- II.
- By Settlement of the Mother.*
14. The father's settlement shall first take effect with respect to the settlement of his legitimate children; but if the father have no settlement, then the children shall have the mother's settlement, *R. v. St. Botolph's*,
ii. pl. 41.
 15. For if a woman marry a man who has not gained any settlement in *England*, or, having gained a settlement, if it cannot be found, her maiden settlement is not suspended by the coverture, *Tynton v. King's Norton*,
ii. pl. 49.
 16. And the mother's settlement shall not only be the settlement of her children, but of her grandchildren, if their respective fathers have no settlement, *R. v. St. Matthew, Bethnal Green*,
ii. pl. 54.
 17. If a mother acquire a new settlement, not in her *own right*, but by marriage with a second husband, her children by her first husband retain their original settlement by *birth or parentage*, and cannot be removed with the mother to her *acquired settlement*, except for *nurture* while under seven years of age, *Wangford v. Brandon*,
ii. pl. 46.
 18. So if a woman, previous to her marriage, acquire a settlement in her *own right*, as by hiring and service, and after the death of her husband acquire a new settlement by marriage with a second husband, the children of her first husband, if the place of his settlement be unknown, shall go to the parish where the mother gained a settlement in her *own right*, and not to the place of her second husband's settlement, *R. v. St. Giles in the Fields*,
ii. pl. 50.
 19. For the settlement so acquired by a widow in her *own right*, destroys the settlement she had by marriage, and is communicated to such of her children as have not before gained settlements for themselves, *St. George's v. St. Catherine's*,
ii. pl. 47.
 20. For a legitimate child may gain a new settlement with its mother after the father's death, *R. v. Woodend*,
ii. pl. 48.
 21. Therefore a child of ten years of age who possesses a derivative settlement from its father, may, after the father's death, acquire a new settlement from its mother by going with her into another parish, and living with her as a part of her family upon her *own estate*, *R. v. Barton Turfe*,
ii. pl. 51.
 22. So also if the wife, after the death of her husband, reside forty days upon a copyhold estate which she had before his death in her *own right*, she thereby gains a new settlement, which shall belong to her children, instead of that which they had before in right of their father, *R. v. Oulton*,
ii. pl. 52.
 23. So also a widow by residence during *quarantine*, gains a settlement for herself and her children who are not *emancipated*, although they do not reside with her during the whole of the *forty days*, *v. Long Whittenham*,
ii. pl. 53.
 24. But a wife, during the life of her husband, cannot gain a different settlement for her children from that which they derive from their father by *parentage*, *Berkhamstead v. St. Mary Northchurch*,
ii. pl. 54.
- III.
- Of Emancipation.*
25. Children, after the age of *seven years* may become *emancipated* from their parents, and acquire new settlements in their *own right*, *Dumbleton v. Beckford*,
ii. pl. 56.
 26. And perhaps before the age of *seven years*; for the age of *nurture* has no relation to the doctrine of *emancipation*, *R. v. Tottington, Lower End*,
ii. pl. 54.
 27. A son of eight years of age, who, on the

- removal of his father into another parish, was left behind, and continued to work for himself, and afterwards married and continued working for himself and his family for twenty years, is thereby separated from his father's family, and cannot derive a new settlement acquired by the father after his removal from the parish in which this son was so left, *Eastwoodkey v. Westwoodkey*, ii. pl. 57.
34. A son who, when nineteen years of age, leaves his father's family, and goes into another parish, where he marries and has children, is emancipated, *St. Michael in Norwich v. St. Matthew, Ipswich*, ii. pl. 58.
35. If a son, after he is one and twenty years of age, marry, and live separate with his wife and family from his father, who is certificated, though in the same parish, yet he is emancipated, *Budgen v. Amptkil*, ii. pl. 60.
36. So if a son having lived with his father under a certificate until he is twenty-four years of age, marry, live in a separate house, has children, and take land under 10*l.* a year, for which he is rated, and pays to the poor's rate, he is thereby emancipated from his parent family, and gains a settlement in the certificated parish, *R. v. Heath*, ii. pl. 762.
37. So also it seems that a son who supports himself entirely by his daily labour, and is married, is emancipated, although he lodge and board in his father's house, for which he pays him five shillings a week; at least such a person is not a part of his father's family for the purposes of a certificate, *R. v. Storrington*, ii. pl. 745.
38. So also where a son, who is of age, marries, he is thereby emancipated, although he continues to live with his father's family as part thereof, *R. v. Evering*, ii. pl. 75.
39. But a person cannot gain a settlement by hiring and service with the son of a certificated man continuing to reside in the certificated parish with his mother after the father's death, as part of her family, though the son were of age, and carrying on business for himself; such circumstances not amounting to emancipation, *R. v. Boworby*, ii. pl. 76.
40. A son apprenticed out by his father to a master living under a certificate in another parish, and not thereby acquiring any settlement of his own, but receiving clothes from his father, and visiting him from time to time, and returning home to him after the expiration of his apprenticeship before he was of age, though he went out to service again in two days after receiving more clothes, is not emancipated from his father's family; and therefore follows a settlement gained by the father while he was so serving as an apprentice, *R. v. Hardwick*, ii. pl. 78.
41. If a son enlist himself as a soldier, and continue four years in the service, he thereby emancipates himself from his father's family, *R. v. Walpole St. Peter's*, ii. pl. 62.
42. A pauper, being eighteen years of age and residing with his father, was drawn as a militia-man, and served for five years as a balloted man. During his service, he, several times when on furlough, and, finally, after his discharge from the militia, returned to his father's house, held, that by his so remaining separated from his father's family after twenty-one, he was emancipated, although the original separation was not voluntary on his part, *R. v. Hardwick*, ii. pl. 82.
43. But a drummer under age, who enters into the same militia in which his father is serjeant, and lives with his father, and permits his father to receive his pay, is not thereby emancipated, *R. v. Woburn*, ii. pl. 74.
44. But a child, as long as he continues a part of the parent family, cannot be emancipated until he comes of age, marries, gains a settlement in his own right, or in some way contracts a relation inconsistent with the idea of his continuing any longer a part of such family, *R. v. Wilton cum Twambrooks*, ii. pl. 69.
45. Where a pauper being settled by parentage in *A.* at the age of thirteen years, lived and served for a year in *A.* and afterwards when he was sixteen years old returned to and lived with his father's family until he became of age; held, that having acquired a settlement of his own in it, he did not follow the settlement of his father subsequently gained in another parish, whilst the pauper continued to reside with him, *R. v. Bleasby*, ii. pl. 81.
46. Where a man married, had four children, and lived with his wife and children separate and apart from his father and mother in the same parish in which his father was settled, it was held to be no emancipation, as it did not appear that he had gained any settlement in his own right, *R. v. Cold Ashton*, ii. pl. 61.
47. But that means that as long as the son continues a part of his father's family, the derivative settlement of his parents is not abandoned; for he may be emancipated, although he never acquires a settlement in his own right, *R. v. Stanwix*, ii. pl. 71.
48. And if the derivative settlement be once abandoned by emancipation, it cannot be regained, *R. v. Roach*, ii. pl. 72.

43. So also where a son, who, at fifteen years of age, bound himself apprentice, served out part of his time, and worked about the country in the way of his business, but who went to his father's house whenever he pleased, kept his holiday clothes there, and considered it as his house, was held not to be emancipated from his father's family, *R. v. Halifax*, ii. pl. 63.
44. So if a certifying parish bind out the son of a certificated man apprentice in a third parish, such son is thereby emancipated from his father's family, *R. v. Silton*, ii. pl. 89.
45. So nine or ten years' residence of a child, by the direction of his father, in a friend's house, for the purpose of his support, is not, if he occasionally visit his father's house as his home, such an absence as will, upon the principle of abandonment, be considered an emancipation, *R. v. Tottington Lower End*, ii. pl. 64.
46. So a boy hired out by his father several years successively, and never living with him, but the father receiving his wages, is not emancipated; but continues to follow his father's settlement acquired after the hiring out, *R. v. Stretton*, ii. pl. 65.
47. So also where a daughter, who, at the age of ten years, had the misfortune to be rendered incapable of work, by her hands being burnt off, and her father, from reduced circumstances, being unable to maintain her, procured her to be maintained by the parish, and at twenty years of age she was accordingly placed in the workhouse, where she remained for several years, the Court held that it was nothing like an emancipation, *R. v. Broadhembury*, ii. pl. 66.
48. So also a child, who leaves its father's family when only five years old, and lives with different relations till ten, is not emancipated, but shall follow the settlement of its father, if he has not gained any settlement in his own right, *R. v. Offchurch*, ii. pl. 67.
49. A son, when he was sixteen years of age, was bound apprentice for four years, which he served, and never afterwards returned to his father's family, but the indenture was void for want of a stamp: and it was held that he was not emancipated, but followed the father to a new settlement, which he had gained while the son was serving under the indentures, *R. v. Edgeworth*, ii. pl. 68.
50. A son of a certificated person, who leaves his father's family at nineteen years of age, and serves a year under a hiring in an extra-parochial place, and at the end of the year returns unmarried and under age, and not having gained a settlement in his own right, to the parish where his father lives under the certificate, and there enters into service, is not thereby emancipated, *R. v. Collingburn Ducie*, ii. pl. 70.
51. Nor is the son of a certificated person, who serves a year in the certifying parish, part of a year in a third parish, and two years in the certificated parish, thereby emancipated, if he returns to and reside with his father, although the first and last services were under regular hirings for a year, *R. v. Inghworth*, i. pl. 38.
52. Where a pauper was bound apprentice to a certificated man, and during his apprenticeship, he being of the age of eighteen, his father gained a new settlement, and the pauper did not return to his father's house till after he was twenty-one; held, that he was not emancipated, and that his settlement followed the new settlement of his father, *R. v. Haggate*, ii. pl. 60.
53. But a son who, at the age of nineteen, enlists in the army, goes abroad as a soldier, marries, and absents himself from his father's family for several years, is thereby emancipated, though he never acquires a settlement in his own right, and cannot partake of a settlement gained by his father subsequent to his enlisting and leaving his family, *R. v. Stanvix*, ii. pl. 71.
54. So a daughter of twenty-two years of age, who leaves her father's house, and hires herself in the same parish as a wet nurse, and after staying only eight weeks in her place, returns to, and continues with, her father's family, is thereby emancipated, though she has gained no settlement in her own right, and is not entitled to a settlement gained by her father between the time of her departure and her return, *R. v. Roach*, ii. pl. 72.
55. A widower having a daughter, placed her at eleven years of age with an uncle, by whom she was wholly maintained after that time, and with whom she continued to reside after she came of age, doing service for him, but without any contract of hiring to give her a settlement of her own, the father having, in the mean time, gone out to service; held, that on coming of age she was emancipated, *R. v. Countessborne*, ii. pl. 77.
56. The pauper, at the time of hiring himself, had a daughter of the age of eighteen, who, from the age of four, had lived with her grandfather, and had been maintained by him till his death, and afterwards by her grandmother, which continued till she attained the age of twenty-one, the grand-

father having by his will directed the grandmother to educate and maintain her out of a fund given to the grandmother for life, and after her decease to the daughter; held, that the daughter was not emancipated, and consequently pauper was not within stat. 5 & 4 W. & M., a person not being a child at the time of the hiring, *R. v. Uxfield*, ii. pl. 79.

3. During the minority of a child, there can be no emancipation unless he marries, and so becomes himself the head of a family, or contracts some other relation, to a wholly and permanently to exclude the parental control, *R. v. Widdington*, ii. pl. 83.

50. *Scule*, that the acquiring a settlement of his own, does not properly constitute an emancipation, *Id. ibid.*

51. A minor having enlisted into the marines, was discharged from that service, and returned to his father's family before he attained the age of twenty-one years; held, that he was not emancipated, *R. v. Botherfield Greys*, ii. pl. 84.

SETTLEMENT BY MARRIAGE.

I. *The Wife's Marriage Settlement.*

II. *The Wife's Maiden Settlement.*

III. *Removal of Wife.*

I.

The Wife's Settlement in Right of the Husband.

1. The husband's settlement is, by the intermarriage, immediately communicated to his wife, *Appotens v. Dunswell*, ii. pl. 102.

2. And during the coverture, the wife cannot gain a different settlement from her husband's, *R. v. Aythorp Rooding*, ii. pl. 104.

3. And even after her husband's death, she shall still retain his settlement, until she gains a new settlement either in her own right by marriage with another husband, & *Giles v. Everley*, ii. pl. 102.

II.

The Wife's Settlement in her own Right.

4. The settlement which a widow gains in her own right, cannot be changed by evidence that she was afterwards married to a man, who, in his life-time, told her he was born in *Yorkshire*; for it is incumbent on the parish, where she is proved to have acquired a settlement, to show a subsequent derivative settlement, *R. v. Mansington*, ii. pl. 117.

5. The maiden settlement of a woman is not

extinguished, but suspended only, during the coverture, *Appotens v. Dunswell*,

ii. pl. 106.

6. And if she marry a man who has no settlement, or whose settlement cannot be discovered, her maiden settlement is not even suspended by the coverture, *R. v. Wilborough Green*, ii. pl. 105.

7. And therefore where a single woman, who had acquired a settlement in her own right, married an *Irish* sailor, who had no settlement as far as she knew of, and who was alive as she believed; having heard that he was so only two months before her removal, but whose settlement, if he had gained any, did not appear, it was held that she was entitled to her own settlement, *R. v. St. Botolph, Bishopsgate*,

ii. pl. 109.

8. So where the evidence was that the pauper's husband was born in *Wiltshire*, but in what parish was not known, or whether he had gained any other settlement; and that he had run away, but was still living for any thing the pauper knew to the contrary, it was held that she was entitled to her maiden settlement; for otherwise she must be starved, *R. Westwam*, ii. pl. 108.

9. So where the pauper had married an *Irishman*, who had not gained any settlement in *England*, it was held that she was settled in her own parish, *St. Giles v. Margaret's*, ii. pl. 107.

10. For in all such cases, unless the husband's settlement can be shown, the wife's own settlement remains undisturbed by the intermarriage, *R. v. Woodsford*, ii. pl. 118.

III.

Removal of the Wife.

11. A wife may be removed alone, unless it clearly appear that such removal will separate her from her husband, *St. Michael's, Bath v. Nunney*, ii. pl. 110.

12. For unless the contrary appear, it shall be presumed that the husband is at the place to which the wife is removed, *R. v. Ironacton*, ii. pl. 111.

13. So also if she be removed "to the place of her last legal settlement," it shall be intended to be the place of her husband's settlement, *R. v. Higher, Walton*,

ii. pl. 112.

14. So if the absence of the husband be only temporary, and his wife be removed to any place *eo nomine* as his wife, it shall be presumed that the place to which she was removed was the place of her husband's settlement, unless the contrary be shown, *R. Hinesworth*, ii. pl. 115.

15. Therefore where a married woman and her child were removed from *Ewell* to *Leigh*, in the absence of her husband, which order was quashed on appeal; but on the husband's return to *Ewell* he and his wife and child were again removed, by a second order, to *Leigh*; which order the session confirmed; but, on the authority of *R. v. Hinzworth*, it was quashed, *R. v. Leigh*, ii. pl. 116.
16. If a foreigner, the husband of an *English* woman, whose father is certificated, live with and support his wife and family in the certificated parish, but has not gained any settlement; his wife, although she ask temporary relief of the certificated parish, cannot be removed from her husband to the parish from which her father was certificated, and in which she is settled by parentage, *R. v. Carleton*, ii. pl. 115.
17. If the husband be abroad, and the place of his settlement not known, the wife may be removed to her maiden settlement, although it is uncertain whether her husband be alive or dead, *R. v. Ryton*, ii. pl. 114.
18. So if a *Scotchman*, who has no settlement, both they and their children, by his consent, may be removed to her settlement, *R. v. Eltham*, ii. pl. 122.
19. By stat. 59 G. 3. c. 12. § 33. the wife and eight unemancipated children of a *Scotchman*, who has not acquired any settlement in *England*, must, if chargeable, be sent by a pass along with the husband to *Scotland*, and cannot be removed to the maiden settlement of the wife, *R. v. Leeds*, ii. pl. 123.
20. If the absence of the husband be only temporary, and the wife be removed to any place *eo nomine* as the wife, it shall be presumed the place of her husband's settlement, *R. v. Hinzworth*, ii. pl. 115.
21. For the removal of a *feme covert* is evidence of her husband's settlement, *R. v. Leigh*, ii. pl. 116.
22. On the removal of a *widow*, it is enough in the first instance to prove her maiden settlement, *R. v. Woodford*, ii. pl. 118. So on the removal of a *wife*, *R. v. Hedsor*, ii. pl. 119.
23. For it is incumbent on the parish in which she was settled while single, to prove a derivate settlement, *R. v. Hensingham*, ii. pl. 117.
24. And it seems if husband and wife be certified, and the wife be removed to the certifying parish by an order, which is unappealed from, this concludes the husband's settlement to be in the same parish, though she was not removed as *his wife*, and he had gained a settlement in the parish to which the certificate was given, *R. v. Towcester*, ii. pl. 120.
25. If a *feme covert* be removed from *A.* to *B.* describing her as "*widow*," and there be no appeal against it, it is conclusive not only as to her settlement, but as to that of her husband also, *R. v. Rudgeley*, ii. pl. 121.
26. So if a pauper and his wife be removed on the examination of his wife, and an adjudication be made that they were settled in *M.*, the parish of *M.*, cannot afterwards remove her as a *single woman* to another parish; for it is conclusive on *M.* as to their marriage, *R. v. Binegar*, ii. pl. 905.

SETTLEMENT BY NOTICE AND RESIDENCE.

- I. *The Statutes.*
- II. *Who may deliver Notice of Residence.*
- III. *The Kind of Notice.*
- IV. *The Time and Manner of Residences.*

I.

The Statutes.

1. By 13 & 14 Car. 2. c. 12. § 1. "upon complaint of the churchwardens and overseers to any justice of the peace, within *forty days* after any person shall come to settle in any tenement under the yearly value of ten pounds, any two justices of the peace of the division where any person likely to be chargeable to the parish shall come to inhabit, may, by their warrant, remove and convey such person to the place where he was last legally settled for the space of forty days, unless such person give security for the discharge of the parish, to be allowed by the said justices."
2. By 1 Jac. 1. c. 17. § 3. "the *forty days* continuance of such person in a parish to make a settlement, shall be accounted from the time of his delivery of *notice in writing* of the house of his abode, and the number of his family, to one of the churchwardens or overseers of the parish to which he shall so remove."
3. By 3 W. & M. c. 11. "the *forty days* from the publication of the *notice in writing* of the churchwarden or overseer; which notice the churchwarden or overseer to whom it is delivered is required to read or cause to be read publicly, immediately after divine services in the church or chapel of the said parish or town, on the next *Lord's day*, when there shall be divine service in the same; and the said churchwarden or overseer is required to register, or cause to be registered, the said

notice in writing, in the book kept for the poor's accounts."

4. And by 3 W. & M. c. 11. § 5. "if any churchwarden or overseer shall refuse or neglect to read or register the said notice as aforesaid, he shall forfeit forty shillings."
5. But by 35 G. 3. c. 101. it is enacted, "that so much of 13 & 14 C. 2. c. 12. as enables justices to remove any person or persons that are likely to be chargeable to the parish, township, or place into which they shall come to inhabit, shall be repealed, and that no poor person shall be removed from the parish or place where such poor person shall be inhabiting, to the place of his or her last legal settlement, until such person shall have become actually chargeable to the parish, township, or place in which such person shall then inhabit, in which case two justices are empowered to remove the person or persons, in the same manner, and subject to the same appeal, and with the same powers as might have been done before the passing of this act, with respect to persons likely to become chargeable."
6. And by 35 G. 3. c. 101. § 4. it is further enacted, "that no person coming into any parish, township, or place, shall be enabled to gain any settlement there by delivery and publication of any notice in writing."

II.

Who may deliver Notice of Residence.

7. By 3 W. & M. c. 11. § 4. "no soldier, seaman, shipwright, or other artificer or workman in the king's service, shall have any settlement by delivery and publication of a notice in writing."
8. By 3 W. & M. c. 11. § 6. "settlements may be gained by serving an office, without delivering notice."
9. By 3 W. & M. c. 11. § 7. "settlement may be gained by hiring and service, without delivering notice."
10. By 3 W. & M. c. 11. § 8. "settlement may be gained by apprenticeship, without delivering notice."
11. A person having land in a parish will not enable him to give notice for the purpose of gaining a settlement, *Ristip v. Harrow*, *Salk. 524.*
12. A person lodging and boarding in a parish cannot give notice of residency for the purpose of gaining a settlement, *Ristip v. London*, *Fort. 319.*
13. But a lodger, whose apartment is distinct from the house to which it belongs, may give notice, *R. v. Buckingham*, *Salk. 554.*

III.

The Kind of Notice.

14. The stat. 3 and 4 W. & M. c. 11. is explanatory of the 1 Jac. 2. c. 27., and no circumstances, however strong, can amount to a constructive notice; but, in order to gain a settlement, the kind of notice described by these statutes must be complied with, *R. v. Talbury*, *Foley, 123.*
15. Therefore, taking up the freedom of a corporation, and voting as a freeman for the election of bailiffs, will not amount to a notice of being an inhabitant, *R. v. Buckingham*, *Salk. 534.*
16. Nor is publication of the banns of marriage under the 26 G. 2. c. 33. sufficient notice, *R. v. Chertsey*, *5 Mod. 454.*
17. Nor attendance on courts leet; doing duty-work on the highways; having a pew in the church; and performing watch and ward in the parish during forty years, *R. v. Abbots Langley*, *Stra. 835.*
18. But it is said, that as the notice need not be exactly proved, there may be cases in which, after great length of time, the Court will presume that notice was given according to the statutes, *R. v. St. Nicholas*, *Salk. 472.*

IV.

Of the Time and Manner of Residences.

19. The forty days' residency required by the above statutes to gain a settlement by renting a tenement under ten pounds a year, need not be forty successive days, if the party hold the tenement the whole time, *R. v. Cirencester*, *Stra. 579.*
20. The residency need not be on the premises holden; for if he reside within the same parish, it is sufficient, *R. v. Bully*, *Burr. S. C. 107.*
21. Therefore where a person held a farm, and lodged more than forty days, but not successively, at a public house in the same parish, about a mile and a half distant from the farm, for about the space of five weeks, in order to look after the farm, and employed workmen to make hedges, cut wood, and weed turnips thereon, and went occasionally to another parish in which his family lived, it was held a sufficient residence to gain a settlement, *R. v. Sowton*, *Burr. S. C. 125.*
22. And where a yearly servant thus alternately resides in the parish where his master's house is situated, and in other parishes where his master also holds a tenement, and resides more than forty days in each of the parishes, his settlement shall

be where he lodges the last night, *R. v. Lowess*, *Burr. S. C. 825*.
 23. But in order to render these kinds of residence sufficient, it is necessary that the tenant should have a fair possession of the tenement; and therefore, if a man who is insolvent has conveyed his estate to trustees for the payment of his debts, and afterwards, before the trust is performed, gets fraudulently into possession, a residence of forty days will not gain a settlement, *R. v. St. Michael's, Bath*, *Dougl. 650*.

SETTLEMENT BY RENTING A TENEMENT.

- I. The Statutes.
- II. Kind of Tenement.
- III. The Tenure.
- IV. The Value.
- V. The Time.
- VI. Of Residence.

I.

Of the Statutes.

1. By 13 & 14 Car. 2. c. 12. "persons who shall reside for forty days upon any tenement of the yearly value of ten pounds, shall gain a settlement."
2. Settlement shall not be acquired by renting a tenement, unless such tenement shall consist of a house or building within such parish, being a separate and distinct dwelling-house, &c., or of land with such parish, or of both, *bona fide* hired by such person at and for the sum of 10*l.* at the least for the term of one whole year; nor unless such house, &c., shall be held, and such land occupied, and thereat for the same actually paid, for the term of one whole year at the least by the person hiring the same; nor unless the whole of such land shall be situate within the same parish as the house wherein the person hiring such land shall dwell and inhabit, 59 G. 3. c. 60.
3. By 6 G. 4. c. 57. the 59 G. 3. c. 50. is repealed, and it is enacted, that no person shall acquire a settlement in any parish, &c., by or by reason of settling upon, renting, or paying parochial rates for any tenement, not being his own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bona fide* rented by such person in such parish, &c., at and for the sum of 10*l.* a year at the least for the term of one whole year; nor unless such house or building, or land,

shall be occupied under such yearly hiring, and the rent for the same to the amount of 10*l.* actually paid, for the term of one whole year at the least, provided that it shall not be necessary to prove the actual value of the tenement.

II.

Of the Kind of Tenement.

1. *Semble*, that in order to gain a settlement by renting a tenement, the pauper must reside upon some part of it, *R. v. Bardwell*, ii. pl. 160.
2. The statute means renting an estate of ten pounds a year, and not purchasing a freehold to that value, *R. v. Stanmore*, ii. pl. 124.
3. A water-mill is a tenement within the meaning of this statute, *Boelyn v. Rentcomb*, ii. pl. 125.
4. A wind-mill also is a tenement, although there be no dwelling-place either in, or belonging to it, *R. v. Butley*, ii. pl. 128.
5. A coney-warren and a cottage upon it, rented at ten pounds a year, will give a settlement; for whether the tenant pays the rent for a house to live in, or for a warren which brings him in a profit, is not material, *Kimber v. Stone*, ii. pl. 126.
6. A rabbit-warren, with liberty to kill rabbits for the profit of the occupier, with a small house on it to keep nets in, is a tenement, although it is a contract only to kill rabbits on a particular spot, with liberty to enter on the soil for that purpose, *R. v. Pentridgehide*, ii. pl. 137.
7. So renting a piece of pasture ground is a tenement, *R. v. Minchin Hampton*, ii. pl. 137.
8. It was formerly held, that the renting of land for the purpose of agisting cows to pasture from May-day to Martinmas, by agreement for three years successively, was not a tenement within these statutes, for that it ought to be the renting of a house or ground itself to make a tenement, *R. v. Linwood*, ii. pl. 137.
9. So also that the pasture estate of a piece of ground was not a tenement, *R. v. Minchin Hampton*, ii. pl. 137.
10. So also that a dairy, consisting of sixteen cows, with the messuage and feeding for the said cows on twenty-one acres of clover ground, and thirteen acres of meadow land, with the aftermath of a mead, which were all parts of one farm, also with the run of the yard belonging to the said messuage, and the arshes belonging to the said farm, for the feeding of pigs, and also the run of one horse, with the cows aforesaid, for one year, &c., was not a tenement

within the meaning of the statutes; because it was an agreement merely for a personal thing, the use of the cows, and had nothing to do with the land, *R. v. Lockery*, ii. pl. 137.

11. But these three last cases have been decided to be law, *R. v. Tolpudde*,

ii. pl. 154.

12. And therefore the renting of a *cattlegate* in a stinted pasture, on consideration of the tenant keeping in repair three common highway-gates, which the person having a right to the *cattlegate* was bound to sustain, is now held to be a *tenement*; although the tenant had no right to it in respect of any property in the land, *R. v. Winley*,

ii. pl. 154.

13. And therefore if a person reside on a tenement of 5l. a-year in the parish of *W.* and, at the same time, rent the *ley* (that is the pasturage) of two cows, from *May-day* to *Michaelmas*, in certain land in *H.* at six guineas, he thereby gains a settlement in *W.* though he were not entitled to the exclusive pasturage of the land in *H.*; for it is nothing more than a common in gross, *R. v. Hallington*,

ii. pl. 146.

14. So also it has been held, that a lease of the fishery of a pond, with the spear-sedge, flags, and rushes in and about the same, is such a constructive demise of the soil, that it is a sufficient tenement to give a settlement, although the lessor had in fact no title to the premises, *R. v. Old Alresford*,

ii. pl. 135.

15. Where a pauper, by order of a corporation made at Common Hall, was allowed the liberty to take sand and gravel from the bed of a river (of which the corporation were entitled to the soil), for which liberty he paid to the corporation at the rate of 10l. per annum; held, that he thereby acquired a settlement, *R. v. All Saints in Derby*,

ii. pl. 155.

16. So also the taking the hay-grass and sheep-math of a meadow, is taking a tenement; for there can be no other profits from the land than the hay-grass and afterwards, it is all the produce of the soil; and not like taking hay-grass after severance, for that is only a chattel, *R. v. Stoke*,

ii. pl. 136.

17. Where a pauper resided for a year in a house in the parish of *A.*, and during all that time had two subsisting parcel contracts for two ponds, or the rushes and sheep growing therein, which he was to have the exclusive right of cutting at his pleasure; held, that these were a sufficient tenement (being together above the value of 10l. per annum) to confer a settlement

in *A.*, *R. v. All Saints, Cambridge*,

ii. pl. 156.

18. So also renting the fogs or after-grass of meadow land is renting a tenement, *R. v. Brampton*,

ii. pl. 138.

19. So also renting a dairy of thirty cows, some at five pounds ten shillings, and others at five pounds, a cow, with liberty to cut furze on an adjoining warren, and on other parts of the farm for the use of the dairy only, is a tenement, *R. v. Piddle-trenkide*,

ii. pl. 157.

20. So also renting twenty cows at three pounds ten shillings a year each, to be fed in particular fields for a certain part of the year, during which time no other cattle was to depasture there, is a tenement, *R. v. Tolpudde*,

ii. pl. 139.

21. But renting a dairy (including the cows and their pasture) at above 10l. a year in value, will not confer a settlement, if the annual value of the lands on which the cows were to be depastured was under 10l. a year, *R. v. Minworth*,

ii. pl. 145.

22. Renting the hire or privilege of milking two cows belonging to another at so much per week per cow, for 40 weeks, which cows were to be depastured by the owner on his farm, in common with his other cattle, and were to be milked by the pauper, will gain him a settlement if the pasturage of the cows be worth 10l. a year, *R. v. Stoke-upon-Trent*,

ii. pl. 149.

23. Where the pauper applied to the owner of a farm, for the milking of a cow, which it was agreed that he should have for the season for 9l. and the particular cow was then pointed out, though nothing was said as to how or where the cow was to be fed, further than he was then told that the owner's farming-man would inform him in what pasture the cow would be first milked, of which he was afterwards informed, and so on from time to time as the pasture was changed; held that this was sufficient evidence of a contract for the taking of a pasture-fed cow, and by consequence of a tenement within the statute, so as to confer a settlement on the pauper, who rented another tenement at the same time of the annual value together of 10l., *R. v. Derby Abbey*,

ii. pl. 151.

24. A pauper serving a farmer was to have the liberty to feed two cows on his master's farm during a year. They were fed during the summer in the pasture of his master, and in the winter in his straw yard, with hay grown upon his lands. It was found that the keep of the two cows during the summer months required land worth 5l. 3s. annually, and to cut hay sufficient for the winter keep required land

- of the further annual value of *£2. 6s.*: held that the right to feed the two cows upon the pasture during the summer, was the only part of the contract which gave any interest in the land, and that the pauper did not thereby gain a settlement, the sessions having found the annual value of the pasture-feed to be less than *10s.*, *R. v. Sutton St. Edmund*, ii. pl. 158.
25. By one entire contract, a master agreed to give his servant *20s.* a year, a cottage to live in, and the agistment of one cow for his own services; and the sum of *28s.* and the agistment of another cow, in consideration of his lodging and maintaining in the cottage two of the master's labourers. The annual value of the lands on which the two cows were depastured, exceeded *10s.*; but the annual value of land sufficient to depasture one cow only would have been less than *10s.*: held that the pauper gained a settlement by the right to agist the two cows, *R. v. Cherry Willingham*, ii. pl. 159.
26. The pauper was hired for a year as a shepherd: he was to have a house and garden, rent free, *7s.* a week, and the going of thirty sheep, with his master's flock, as wages. He served for two years, at those wages, in the parish of *I.*; during all which time the sheep went on his master's farm, the whole of which was situated in that parish, the feed of the sheep was worth *16s.* per annum: held that this did not confer a settlement, it not being any part of the bargain that the sheep should be pasture-fed, *R. v. Bardwell*, ii. pl. 160.
27. A pauper was hired for a year, and had, by agreement, a house and garden, a rood of potatoe land, and the keep of a cow on his master's land. After the pauper had served ten years, his cow failing in milk, the pauper had, in lieu of the cow, kept two heifers, through the kindness of his master, and not in consequence of any bargain. The potatoe land, and the keep of two heifers, was of the annual value of *10s.*; but the potatoe land, and the keep of the one cow, was of less annual value than *10s.*: held that the pauper, by having the potatoe land and the keep of the two heifers before the passing of the *59 G. 3. c. 50.*, gained a settlement; but *semble* that by having the potatoe land and the keep of two heifers after the passing of the *59 G. 3. c. 50.*, he would not have gained a settlement, *R. v. Benneworth*, ii. pl. 161.
28. Renting a certain number of lugs of land, at so much per lug, for the purpose of planting potatoes, where the pauper agreed to take the land of the landlord ready ploughed and manured, and when he entered upon it, it was quite prepared, was held to be a renting of land of a yearly value, as it was increased by being ploughed and manured by the landlord, although when the pauper took it the ploughing and manuring was begun but not finished, *R. v. West Cramore*, ii. pl. 163.
29. So also land taken for a particular purpose, as that of growing potatoes for a particular portion of the year, is a tenement, *R. v. Shenston*, ii. pl. 139.
30. So also renting a right of common in gross, of the value of *10s.* a year, is a tenement, *R. v. Dersingham*, ii. pl. 141.
31. A house rented within the rules of the *Fleet Prison* is a tenement, although the tenant is at the same time a prisoner in the custody of the warden of the *Fleet*, *St. Margaret's, Westminster v. St. Martin's, Ludgate*, ii. pl. 137.
32. A first and second story unfurnished of a house of the value of *40s.* a year, to which house there is only one door and one stair-case, which are used in common by the pauper and the persons who live in the other parts of the house, is a tenement, *R. v. St. George's, Hanover Square*, ii. pl. 130.
33. So also a shop at *15s.* a year, being part of a house without any door but that which opens immediately into the street, and having no communication with the other part of the house, is a tenement, *R. v. St. Giles's*, ii. pl. 131.
34. So also a room at a victualling-house hired at so much a week, to be used as an office or place for the justices to meet and transact the parish and other public business in (the pauper being clerk to the justices), the landlord to furnish the room, to find firing, and to have the room once a fortnight for assemblies, and also at all other times when the pauper did not want it, is a tenement within the statute, *R. v. Whitechapel*, ii. pl. 132.
35. A land sale colliery, which is a name in coal countries, comprehending not only the coal-mine only, but the stock of horses, gins, ropes, and other things necessary for working the mine, is a tenement, the renting of which will give a settlement, *R. v. North Bedburn*, ii. pl. 133.
36. But if a man agree with a miller to carry with his own horses and carriages three loads of wheat, at his own costs and charges weekly to the mill, to grind the same thereat, and to pay *8s.* a load grinding for five years; and the miller agrees that he shall have the use and liberty of running and grazing for his horses in a particular meadow described in the agreement, and also the use and liberty of the stable dur-

ring the said five years, the miller at the expiration thereof to take back all the utensils of the mill at a fair appraisal, but the man never resides in the mill, but in a cottage in the same parish, which he rented at 5*l.* 18*s.* a year; this is not such an agreement to take a tenement as will confer a settlement, *R. v. Hammermith*, ii. pl. 140.

37. So also the renting, by a needlemaker, of two out of six pointing places in another's mill, any two of which he was at liberty to use from time to time, at 16*l.* a year rent, and engaging also to do all his landlord's work in preference to that of others, for which he was to be paid by the piece, is not taking a tenement so as to gain a settlement, *R. v. Dodderhill*, ii. pl. 142.

38. The renting by a needlemaker, of certain runners in another's mill, together with a packeting room, of all which he had the exclusive use [a runner being a piece of machinery for scouring needles, screwed down to the floor of the mill], the whole being of the annual value of above 10*l.*, including the separate value of the runners, is not the taking of a tenement whereby a settlement can be gained, *R. v. Tardebigg*, ii. pl. 143.

39. A contract for a standing place in another's mill for a carding machine (the party's own property), which was fastened to the floor and the roof, for the purpose of being worked by the steam-engine of the mill; for which the party was to give 20*l.* a year, with liberty to quit on three months' notice, is not a taking of a tenement, but a mere licence to use the machinery of the mill; and therefore no settlement can be derived under it, *R. v. Mellor*, ii. pl. 144.

40. Where a corporation, by verbal agreement with a pauper, leased to him the toll of a market for above 10*l.* a year, it was held that he could not gain a settlement thereby, as no interest could pass from a corporation but under their seal; and therefore he had no more than a mere licence to collect the tolls; but if such toll had been leased to him under the seal of the corporation, it seems that he would have gained a settlement by residing for forty days in the same parish where the market was, *R. v. Chipping Norton*, ii. pl. 147.

41. A butcher agreed to occupy a stall in a market at 2*s.* 6*d.* per week. The stall was a permanent building, with a door capable of being locked, and the key was in his possession; but he had a right of access to the stall on two days in the

week only. On other days the market was closed. The pauper used the stall on the market days for a period of 19 weeks, and paid rent for that time: Held, that he had occupied the stall for 38 days only, and therefore gained no settlement. *Semble*, that this was a coming to settle upon a tenement within stat. 13 & 14 C. 2. c. 12. § 1., *R. v. Caversham*, ii. pl. 162.

42. By 13 G. 3. c. 84. "no person renting the tolls of turnpikes, and residing in any toll-house belonging to the trustees, shall thereby gain a settlement."

43. But a person may gain a settlement by residing forty days in a turnpike-house as servant to the collector of the tolls, in the same manner as if he had resided in any other tenement; for the above statute only says that no person shall gain a settlement by renting the tolls, and residing in the toll-house, *R. v. Denbigh*, ii. pl. 148.

44. Renting the tolls of a bridge vested by act of parliament in a company of proprietors who are declared a corporation, will confer a settlement, although the tolls were made personal estate, and the renting is not stated to be by deed, *R. v. Budmish*, ii. pl. 152.

45. The general turnpike act which prohibits persons from gaining a settlement by renting the tolls of turnpike roads, does not extend to the tolls of a bridge, which bridge does not appear to be part of the turnpike road. *Id. ibid.*

46. Where five persons, as members of a managing committee of a corporation, who were proprietors of a bridge and the tolls thereof, demised the toll-house and tolls to the pauper for one year, reserving a rent to the corporation and a power of re-entry, but the demise was not under the corporation seal, but only under the seals of the five individual members: held, that the pauper did not gain a settlement by occupying the toll-house and tolls above forty days, and that his having paid rent for the same made no difference, the annual value of the toll-house without the tolls not exceeding 5*l.*, *R. v. North Duffield*, ii. pl. 154.

47. A person renting the tolls and residing in the turnpike-house erected by order of the commissioners appointed by the 30 G. 3. c. 67. for paving, lighting, and regulating the streets of Durham, and for other local objects, cannot gain a settlement in the parish, by the general turnpike act, 13 G. 3. c. 84. § 56. *R. v. Elvet*, ii. pl. 150.

48. Where a pauper took a tenement at 1*l.* a year, which he occupied, receiving

parish pay for six months after, having previously agreed to underlet to another a part for 5*l.* a year, which other guaranteed to the landlord the payment of the rent, without which he would not have let to the pauper; but the pauper paid the whole rent for the first year; it was held that this was a coming to settle within 13 & 14 C. 2. c. 12, upon a *tenement* of 10*l.* a year, though the sessions found that credit was given by the landlord to the pauper for only six pounds a year, and that for the rest, the credit was given to the guarantee; for the pauper being the *legal tenant* of the whole premises, it is immaterial whether the credit was given to him for the rent, *R. v. Hooe*,

ii. pl. 216.

49. The master of a charity school, who was removable from his office at pleasure, resided for seven years rent free in a house of the annual value of 10*l.* where other parish schoolmasters had resided before. Part of the house he underlet to the parish at an annual rent: Held, that this was a coming to settle upon a tenement of the value of 10*l. per annum* within the meaning of the 13 & 14 C. 2., and that the pauper thereby gained a settlement, *R. v. Lakenheath*,

ii. pl. 157.

III.

Of the Species of Tenure.

50. The tenement necessary to gain a settlement must be an *entire tenement*; that is, although it may consist of several parcels taken at different times, and in different parishes, yet the tenant must have an *entire interest* therein to the amount of ten pounds for the whole year, *North Nibley v. Wootton-under-Edge*,
- ii. pl. 163.
51. Therefore a house at six pounds a year, taken from *Lady-day* to *Lady-day*, and a meadow of the yearly value of eight pounds, near to the said house, taken from the end of the *May* following to *Lady-day*, at five pounds ten shillings, is an entire tenement, *Id. ibid.*
52. So also a messuage, rented in the parish of *A.*, a house and lands in the parish of *B.*, at seven pounds ten shillings a year, whereof so much as amounted to four pounds ten shillings a year lay in the parish of *A.*, the whole being of more than the yearly value of ten pounds, is a sufficient tenement to give a settlement in *B.* where the house stood, and the pauper resided, *South Sydenham v. Lamerton*,
- ii. pl. 164.
53. So where the pauper rented a farm-house and lands of twelve pounds ten

shillings a year, and had ability to purchase a competent stock for a farm of that value, and had paid rent for the same for two years, and the farm-house and lands lay contiguous to each other, and had been usually let together, and occupied by the same tenant, it was held that he gained a settlement in the parish where the house stood, although the whole lay in different parishes, and not to the amount of ten pounds a year in either of the parishes, *Elsed v. Hollibourne*,

ii. pl. 165.

54. So also a house rented at thirty shilling a year in one parish, and lands taken at a different time in another parish of twelve pounds a year, will gain the tenant a settlement in the parish in which he resides, *R. v. Sandwich*,
- ii. pl. 167.
55. A lease of a tenement of three pound a year in the certificate-parish, and renting a tenement of 43*l.* a year in the adjoining parish, are sufficient to avoid the certificate, *R. v. Stapleford*,
- ii. pl. 164.
56. A farm of 52*l.* a year, rented, occupied and managed jointly by two tenants, is tenement to each of them, *Little Tew v. Duns Tew*,
- ii. pl. 164.
57. So the joint occupation of a farm of 120*l.* a year, although one of the parties only is the tenant to the landlord, is sufficient tenement to each of them, *R. v. Seamer*,
- ii. pl. 171.
58. A house taken for a year at the rent of three pounds ten shillings in one parish and another house taken for a year of nine pounds a year in another parish, gain the tenant a settlement in that parish where he lived the last forty days although he had tendered the key of the first house to the landlord, and the landlord had refused to accept of it, *St. Lawrence v. St. Maurice*,
- ii. pl. 16.
59. A house of six pounds a year rented to one man, and a stable at fifty shillings a year quarter rented of another man, is an *entire tenement*, and gains a settlement although the tenant is not rated for the stable, *R. v. St. Margaret's Fish Street*,
- ii. pl. 17.
60. A house with three acres and two roods of land, at nine pounds a year, in one parish, and a cottage in another parish thirty shillings a year, held in right of the pauper's wife who was a widow, but he not administered, will gain a settlement in that parish where the pauper resided the last forty days, *R. v. Donington*,
- ii. pl. 17.
61. A house and land, the one of three pounds a year, the other of eight pounds a year in the same parish, taken at different

ent times, and of different landlords, form an entire tenement, and will gain a settlement to the person so taking it, although he afterwards occupy the same jointly with another, *Aure v. Newnham*, ii. pl. 172.

65. Where the pauper having a freehold estate in the parish of *A.* which he had let for 50*l.* per annum, rented a tenement in the parish of *B.* of the value of eight guineas per annum, and resided there forty days: held, that he did not gain a settlement in *B.*, as he could not be considered as the occupier of the freehold estate, *R. v. South Benfleet*, ii. pl. 180.

63. A pauper, by occupying a freehold estate of his own, and also other lands as tenant, the whole being of the aggregate value of 10*l.* does not thereby gain a settlement; it being necessary, under the 13 & 14 C. 2. c. 12, that he should come to settle on all the property in the character of tenant, *R. v. St. John in Glastonbury*, ii. pl. 168.

64. Where the pauper was hired as bailiff to *P.*, who held a farm, under an agreement that he was to have weekly wages, &c., and his master to find him a house, and either to furnish him with two cows, or the pauper was to be at liberty to hire two, and feed them on the farm, and he served three years under the agreement, and lived with his family in his master's house, occupying the kitchen and two rooms, and hired two cows, which fed during the summer on the pastures of his master: held, that by the feeding of two cows, which was above the yearly value of 10*l.*, the pauper acquired a settlement, *R. v. Minter*, ii. pl. 182.

66. Where pauper, a married man, agreed to serve *S.* for a year as a labourer, and was to have 20*l.* a year, a house and garden, a piece of land for potatoes, the milk of a cow, and feeding of a pig, which were to run on a neighbouring field; and under this agreement the pauper served, and had the exclusive occupation of the house for himself and family, the house being about one hundred yards from the house of *S.*, and being necessary for the performance of his service, and if he had not had it, he would have had more wages: held, that this was not a coming to settle on a tenement to confer a settlement, *R. v. Keldern*, ii. pl. 185.

67. The statutes of 8 & 9 W. 3. c. 11. and 13 & 14 C. 2. c. 12. § 1. are in *pari materia*, and must receive a similar construction; and therefore, where a pauper, in addition to house and land, had agisted three cows in the fields of his landlord for two or

three months, but no positive contract for such agistment was proved, it was held, that the sessions might properly infer that this was "taking a lease of a tenement," within the 9 & 10 W. 3. c. 11. so as to discharge a certificate, although the value of the agistment, if computed only for the time of the actual occupation, was not sufficient, if added to the house and land, to make up the value of 10*l.*, *R. v. Croft*, ii. pl. 189.

68. A pauper, employed as a labourer by the board of ordnance, having previously occupied a house at an annual rent of 7*l.* which was then purchased by the board, still continued to reside in part of the premises, at a weekly rent of 2*s.*, which was deducted out of his wages, and during such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*), and upon his dismissal from his employment, he gave up possession of the house, as required: held, that this last occupation of the house was not as tenant, but as servant, and that no settlement was thereby gained, *R. v. Chestnut*, ii. pl. 187.

69. A man who, being insolvent, conveys his estate to trustees for the payment of his debts, but afterwards, and before the trusts are performed, gets fraudulently into possession of the estate, is not thereby possessed of a sufficient tenement to gain him a settlement, *R. v. St. Michael's in Bath*, ii. pl. 173.

70. Two farms in different parishes, held of different landlords, the one of 8*l.* a year, the other at 2*l.* 10*s.* a year, is a tenement of 10*l.* a year, although the farm of 2*l.* 10*s.* a year was given to the pauper rent free, and out of charity, *Bedworth v. Fillongley*, ii. pl. 174.

See *R. v. Hooe*,

ii. pl. 216.

71. The pauper, who rented a farm in *C.*, assigned it to *P.* upon trust, to cultivate it and pay the pauper's debts, &c.; the lease expired in 1817; no settlement of accounts took place; but *P.*, without the authority of the pauper, then hired a house in *H.*, at the yearly rent of 18*l.*, to which the pauper and his family removed, and they resided there for more than two years: the pauper never paid any rent or taxes; but *P.* was rated, and paid the rent and taxes: held, that the pauper gained a settlement in *H.* by the occupation of the house, *R. v. Chedeston*, ii. pl. 192.

72. After the passing of 59 G. 3. c. 50. the pauper held together for a year a house and garden, and paid rent for the same

- during that period; they were taken of different persons at different times; the rent of the house was *5l. 6s.*; the pauper underlet one room, communicating with the rest of the house by an inner door, and with the yard by an outer door; the rent of the garden was *3l. 15s. per annum*, and it was occupied by the pauper himself: held, that although there was a separate taking of the house and of the land, that this was a tenement within the meaning of the *59 G. 3. c. 50.*; and, secondly, that although one of the rooms was underlet, still the house continued to be the separate and distinct dwelling-house of the pauper, within the meaning of that statute, *R. v. North Collingham*, ii. pl. 190.
73. A. occupied a tenement of *10l.* a year, and died, leaving three children, to two of whom he bequeathed *5s.* each, and to the latter (whom he made executrix), the residue of his property; the pauper, who had before the death of the testator married the executrix, resided on the tenement above forty days, and paid rent for it; and this was held to gain him a settlement, though the wife never proved the will, *R. v. Netherseal*, ii. pl. 175.
74. A cottage of the value of *30s.* a year, which a pauper resides in under pretence of purchasing, and land in another parish of *10l.* a year, which he entered on at his father's death, is a sufficient tenement to gain a settlement in the parish in which the cottage is situated, *R. v. Culmstock*, ii. pl. 177.
75. The occupation of a cottage for forty days, by the leave of the former tenant, who then went out under an agreement with the pauper to pay the same rent to the landlord which he had before done, but without any authority from the landlord (the cottage, together with other premises occupied at the same time, being *10l.* a year and upwards), give the occupier a settlement, *R. v. Alborough*, ii. pl. 178.
76. A pauper agreed to commence tenant of premises of the value of *10l. per annum* and upwards on the *5th of July*, and in the *June* preceding, by permission of the then tenant, put several of his goods on the premises and worked there, the tenant also giving up to him the key of the premises, and sleeping elsewhere: held, that this was no occupation of the premises in the relation of tenant, and that the pauper was removable (being actually chargeable) on the *28th of June*, *R. v. St. Michael's in Coventry*, ii. pl. 179.
77. Where a person rented and resided on a tenement of *4l.* a year, and in the same year bought at a public auction, on *15th August*, four lots of oats, growing in one field, for *12l. 14s.*, which oats were of different kinds that ripened at different periods, and he began to reap them on *14th September*, and continued reaping them as they ripened, and carted them away at intervals between the *14th September* and *3d November*, on which day he carried off the last load: held, that he did not thereby acquire a settlement, *R. v. Bowness*, ii. pl. 185.
78. Where pauper's husband, being a soldier, deserted, and left his family in the parish of *S.*, and the wife, during his absence, took a house at *5l.* a year in *S.*, and lived in it with her family, and also took another house at *5l. 5s.* a year, and put some of her husband's furniture in it, intending to remove thither, but never did remove, but underlet it; and during the time she held both, her husband came to see her, and remained seven weeks concealed in the house where she lived, and was made acquainted with her having taken the two: held, that the husband did not gain a settlement by this residence, *R. v. Ashton under Lyne*, ii. pl. 184.
79. A soldier, whilst his regiment lay in barracks at *B.*, took a house there for himself and family of the yearly value of *10l.*, and resided therein more than forty days: held, that this was coming to settle in a tenement, and that he thereby gained a settlement, *R. v. Brighton*, ii. pl. 186.
80. Where a person engaged himself as waiter at an hotel, and had the tap or privilege of selling malt liquors there, and the use of the cellar for holding the liquors, which had a separate entrance, and of which he kept the key, and paid for his situation of waiter, and for the tap and cellar, the yearly sum of *60l.*: held, that this was not such an occupation of the cellar as to confer a settlement, *R. v. Seacroft*, ii. pl. 181.

IV.

Of the Value of the Tenement.

81. A pauper, three weeks after *May-day*, 1890, hired a house and land in the parish of *S.* for a year, from the preceding *May-day*, at the rent of *15l.*, and, at the expiration of that time hired it again for another year at the same rent; he occupied the premises from the time of the

- first hiring until six months after the second hiring, and paid the rent during the whole period, calculated from *May-day, 1820*: held, that he thereby gained a settlement in *S.*, for that the occupation under the different hirings might be connected, so as to make an occupation for one whole year, within 50 G.3. c. 50., *R. v. Shaw*, ii. pl. 191.
82. An agreement in writing, unstamped, for the letting a tenement at a certain rent, having been lost: held, that parole evidence of its contents was not admissible for the sake of proving thereby the value of the tenement, *R. v. Castle Morton*, ii. pl. 212.
83. A tenement of the value of 10*l.* a year will gain a settlement, although there is no rent reserved; for it is the value, and not the rent, that is material, *South Sydenham v. Lamerton*, ii. pl. 193.
84. Therefore where a house of the value of only 6*l.* 10*s.* a year was taken at the rent of 10*l.* a year, under a covenant that the landlord should erect new buildings on the premises, which would have raised the value to the rent, but which buildings were not erected, it was held that this was not a tenement of sufficient value to gain a settlement, *Southwold v. Yorkford*, ii. pl. 195.
85. But if there be no circumstance in the taking which imports the value to be less than the rent, the rent shall be evidence of the value; and therefore where the sessions stated that the pauper had taken a farm at the rent of 10*l.* a year, but did not explicitly state the real value, or adjudge the taking to be fraudulent, the court held it sufficient to gain a settlement: although the case adds, that the farm had been let only for 7*l.* a year formerly, and that the tenant's stock was not equal to a farm of 10*l.* a year, *Weston v. Gibson*, ii. pl. 196.
86. Upon the same principle a sole tenancy in a house of 8*l.* a year, and a joint tenancy in land of 3*l.* 15*s.* a year, do not form a tenement of 10*l.* a year; for the value of the tenement shall be estimated by, and taken according to the rent, if no other evidence of value appear, *Knipton v. Thrington*, ii. pl. 198.
87. But if it be of the value, it is sufficient, though no rent is reserved; and therefore a house and meadow worth 10*l.* a year, in which a *MEERD*, as a reward for his service, is permitted to live, by a number of persons who have a right of common in the place where it is situated, is a tenement, although he pay no rent; for services in this case are equivalent to rent, *Simonbourn v. Melkridge*, ii. pl. 205.
88. So where a person rented a farm of 10*l.* a year in the parish of *A.*, and resided in *B.* rent free, by the permission of a relation, on a separate tenement worth 35*s.* a year, he thereby gained a settlement in the parish of *B.* *R. v. Fritwell*, ii. pl. 225.
89. And a tenement under the value of 10*l.* a year, rented from year to year, which, at any time during the occupation of the pauper, becomes of the value of 10*l.* a year, will gain a settlement, though no alteration be made in the rent, *R. v. Bilsdale Kirkham*, ii. pl. 202.
90. The value of a tenement, in respect of acquiring a settlement, is to be taken as of the time when the party comes to settle on it; hence where a man took a piece of land for ninety-nine years, at the rent of 2*l.* 2*s.* a year, on which he built two houses, each of the yearly value of 5*l.* 5*s.*, in one of which he lived, and let the other at 5*l.* 5*s.* a year: held, that he did not thereby gain a settlement, *R. v. Asdon*, ii. pl. 211.
91. Land of the value of 6*l.* 10*s.* a year, on which the tenant builds a *post windmill*, and which, by agreement with his landlord, he was to take away on quitting the premises, is not a tenement of sufficient value, although the mill be let for 9*l.* a year, *R. v. Londonthorpe*, ii. pl. 206.
92. The taking of a tenement which, by having been cropped by the landlord, with clover and grass-seeds, when let to the tenant was worth 10*l.* a year, but without that circumstance would have been of much less annual value, will confer a settlement, *R. v. Purley*, ii. pl. 209.
93. A landlord demised a house and fixtures to a tenant, at an annual rent of 10*l.*, and the tenant paid rates in respect of the same, but the house was not rated at 10*l.* *per annum*: held, that the fixtures being parcel of the tenement demised, and the whole together being of the annual value of 10*l.*, the tenant gained a settlement by this payment of rates, *R. v. St. Dunstan*, ii. pl. 213.
94. The renting of an acre of land at 8*l.* from *Easter* to *October*, for planting potatoes (where the land had been previously dug by the landlord for that purpose, and would not have been let for more than half that price if it had not been dug) was considered as a tenement of the yearly value of 8*l.*, although the case stated that in a common way an acre

- of such land would not let for more than 2*l.*, *R. v. Ringwood*, ii. pl. 210.
95. If the tenement be occupied by several tenants jointly, each must have an interest in it to the value of 10*l.* a year; and therefore a farm rented at 14*l.* a year by two persons jointly, but the rent paid, the stock stinted, and the profits taken separately by each, is not a tenement of sufficient value to enable either of the tenants to gain a settlement, *Croft v. Gainsford*, ii. pl. 194.
96. So also a house and land hired at 16*l.* a year jointly by two persons, is not such a tenement to each as will gain either of them a settlement, *Marden v. Barham*, ii. pl. 197.
97. But a farm of 52*l.* a year, rented, occupied, and managed jointly by two tenants, is a tenement to each of them, and both may gain settlements under it, *Little Tew v. Duns Tew*, ii. pl. 168.
98. So although one of the partners only be tenant to the landlord, for the other may be considered either as a joint or an under-tenant, *R. v. Seamer*, ii. pl. 176.
99. But where the tenant at will of a tenement, underlet part, and the landlord received the rent sometimes from the tenant, and sometimes from the under-tenant, and the tenant afterwards took a piece of land, which, together with the value of what he himself held, made up 10*l.* a year; it was held that he thereby gained a settlement, *R. v. Maghull*, ii. pl. 203.
100. So also if a person take a house at the rent of 10*l.* a year, it is sufficient, although the landlord is to pay all parish rates and charges, *R. v. Framlingham*, ii. pl. 201.
101. Settling for forty days upon a tenement, of the yearly rent of 10*l.*, the landlord paying rates and taxes, will confer a settlement on the tenant, *R. v. St. Paul's Deptford*, ii. pl. 188.
102. It is not necessary that the part of the tenement in which the tenant resides should be of the value required; and therefore where a pauper rented a tenement of 10*l.* a year, but lived in a part of it worth 40*s.* only, it was held sufficient to gain him a settlement, *Llandoverras v. Northop*, ii. pl. 199.
103. And if the rent paid be equal to 10*l.* a year, it is sufficient; and, therefore, a tenement taken for five months at the gross sum of 4*l.* for the five months, will gain a settlement, although it be something less than 10*l.* a year, if the sessions find it of that value, *St. Matthew's Bethnal Green v. St. Botolph Aldgate*, ii. pl. 200.
104. A tenement found to be of the value of 4*s.* a week, at all times of the year, if let by the week, but not to be of the value of 10*l.* a year, if let by the year, cannot confer a settlement on the occupier by residing thereon forty days, *R. v. Hellingley*, ii. pl. 207.
105. If the renting be fraudulent, as if a person take land without stocking it, and let it out again to be occupied in parts and parcels, though the value be greatly above 10*l.* a year, yet it will not gain a settlement, *Ashburton v. Woodland*, ii. pl. 204.
106. A pauper held a house at the annual rent of 8*l.* from Lady-day to Michaelmas 1821, and a different house from Michaelmas 1821, to Lady-day 1822, at the annual rent of 9*l.*, and during the whole of that period he was tenant of a garden at an annual rent of 2*l.* 2*s.*; but he had agreed with another person, that they should share the expence and the profits arising from the cultivation of the garden, and that person paid him half of the rent, but he paid the whole to the landlord; it was held that he did not gain a settlement, because he did not during the whole year, as required by 59 G. 3. c. 50., hold a house and occupy land, which together were of the annual value of 10*l.*, *R. v. Tonbridge*, ii. pl. 217.
107. The stat. 59 G. 3. c. 50. makes the payment of a year's rent by the person hiring a tenement, a condition precedent to the gaining of a settlement by reason of dwelling therein for forty days. The stat. 6 G. 4. c. 57. repeals that statute, but still makes the payment of a year's rent, but not by the party having the same, a condition precedent to the gaining of a settlement, and therefore where a person, after the passing of the 59 G. 3. c. 50. hired a tenement of the annual value of 10*l.*, and held it for more than a year, but died before a whole year's rent was paid, he was held to gain no settlement, although after his death, and after the passing of the 6 G. 4. c. 57., the rent was paid out of money produced by the sale of his goods, *R. v. Carshalton*, ii. pl. 218.

V.

The Time for which the Tenement may be taken.

108. The tenement need not be taken for a year; and therefore where land of the value of 10*l.* a year was taken from *Candlemas* to *Michaelmas*, it was held sufficient, *Gratwick v. Shenston*, ii. pl. 214.
109. So where the pauper hired a dwelling-

house for five months, which was the remainder of a term which the preceding tenant had in the premises, it was held sufficient, the money paid for the five months being equal in value to 10*l.* a year, *St. Matthew's v. St. Botolph*, ii. pl. 200.

110. So also where the pauper took a farm, consisting of a dwelling-house and several closes and lands, at the yearly rent of 26*l.*, and entered on the premises on the 1st or 2d of June, and occupied them until the Lady-day following, and then quitted the same, it was held sufficient; for he was irremovable for above forty days, *Stanton-under-Bardon v. Ulescroft*, ii. pl. 215.

VI.

Of the Residence.

111. It is not necessary to the gaining a settlement by coming to settle upon a tenement, that the pauper should reside upon any part of it, *R. v. Kenardington*, ii. pl. 230.
112. The residence must be either within the tenement, or within the parish in which the tenement is situated, *R. v. Knighton*, ii. pl. 222.
113. And the residence must be for forty days, and therefore where the pauper had resided only twenty-nine days, although he was forcibly prevented from continuing in the tenement for the remaining eleven days, was held not sufficient, *R. v. Llanbedergerch*, ii. pl. 224.
114. So where a pauper who, after residing five days in *B.*, was arrested, and sent to prison in *C.*, and his wife and children resided on the tenement for seven weeks after the arrest, the residence was held not sufficient, *R. v. St. George the Martyr*, ii. pl. 226.
115. And if a person alternately reside more than forty days in the whole in each of the parishes, the settlement shall be where he lodged the last night, *R. v. Lowess*, ii. pl. 226.
116. And therefore where a man had a tenement of above 10*l.* a year in *A.* in which he generally, and his wife and family constantly resided for several years; but he occasionally slept in *B.* where he had another tenement under 10*l.* a year, and slept in *B.* more than forty days, and particularly on the last night when both the tenancies expired, his settlement was held to be in *B.* *R. v. St. Mary, Lambeth*, ii. pl. 227.
117. A pauper will gain a settlement in the parish where he passes the last night of his tenancy (if he have slept there forty nights), although employed during the whole of that night in packing up his things without going to bed, *R. v. Ringwood*, ii. pl. 210.
118. But where a person rented a farm of 30*l.* a year in the parish of *A.*, and resided on it from Lady-day 1779 to Christmas 1781, when he went with his wife publicly to reside with his son-in-law in the parish of *B.*, taking with him all his furniture and the stock remaining on his farm; and he resided in the parish of *B.* upwards of forty days before he delivered up the possession of his farm in *A.*, but did not hire or occupy any land or tenement whatever in *B.*; it was held that this residence was not sufficient to gain a settlement, *R. v. Topcroft*, ii. pl. 221.
119. But a tenement of 10*l.* a year, in which a man's wife and children live, and the lease of which is unexpired, gains them a settlement in the parish in which the tenement is situated, although he occasionally reside in another place, and do not reside in this tenement the last forty days previous to the removal of his wife and children, *R. v. Leeds*, ii. pl. 199.
120. A residence of thirty-three days by a widow on a tenement of 10*l.* a year, cannot be coupled with a residence on the same tenement with her husband for sixteen days preceding, *R. v. South Lynn*, ii. pl. 225.
121. But if a person rent a farm in *A.* of 10*l.* a year, a residence in *B.* rent-free, by the permission of a relation, on a separate tenement of 35*s.* a year, is sufficient to gain a settlement in *B.* *R. v. Fritwell*, ii. pl. 225.
122. A pauper does not gain a settlement by having hired a tenement of more than 10*l.* a year value, and having resided therein more than forty days altogether, but less than forty days before the passing of the 59 G. 3. c. 50., by which a residence for twelve months is necessary in order to confer a settlement, *R. v. St. Mary-le-bone*, ii. pl. 228.
123. A house, of the annual value of 10*l.* was hired by *A.* at Michaelmas 1824, and he died three days before the year expired, but his corpse continued in the house after the expiration of the year, and after his death his widow resided there, and paid the year's rent: held, that *A.*'s widow and children did not gain any settlement, *R. v. Crayford*, ii. pl. 229.

SETTLEMENT BY PUBLIC TAXES.

I.

Of the Statutes.

1. By 5 Wil. 3. c. 11. § 6. "if any person inhabiting in any parish shall, for himself, and on his own account, be *charged with and pay* his share towards the public taxes, or levies of the said parish, he shall thereby gain a settlement, though no notice be delivered pursuant to the statutes of 13 & 14 Car. 2. c. 12., 1 Jac. 1. c. 17., and 3 Wil. 3. c. 11. § 3."
2. But by the 9 & 10 Wil. 5. c. 11. "certificated persons cannot gain this species of settlement."
3. And now by 55 G. 3. c. 101. § 4. it is provided, "that no person or persons whatsoever, who shall come into any parish, township, or place, shall gain a settlement in such parish, township, or place, by being charged with, and paying his, her, or their share towards the public taxes or levies of the said parish, township, or place, for, and on account, or in respect of, any tenement or tenements, not being of the yearly value of ten pounds."

II.

The Kind of Taxes.

4. The payment of the *land-tax*, though it is not a parochial tax, yet when paid in a parochial limit, is a public tax within the meaning of the act, *R. v. Blood*,
Comb. 410.
5. Therefore where the husband of the pauper was a tide-waiter, who was rated to, and paid the land-tax on his salary, it was held, that he thereby gained a settlement, although the amount of what he paid was afterwards repaid to him by the collector of the customs, *Oakhampton v. Kenton*,
Burr. S. C. 5.
See also *R. v. Chidingfold*,
Burr. S. C. 415.
6. A custom-house officer, who was rated for his salary towards the land-tax, and, in fact, paid the rate himself, though the money was either given to him beforehand for the purpose, or allowed to him afterwards by the collector, gains a settlement in the parish in which he is so rated and pays, *R. v. Armouth*,
8 East, 383.
7. But a tax for the repair of a county bridge is not a public tax within the statute, *R. v. St. Michael's Cornhill*,
Sett. & Rem. 1.
8. By 9 G. 1. c. 7. § 6. "no persons who shall be taxed to the *scavenger*, or to the

repairs of the *highway*, shall, by paying the same, gain any settlement."

9. By 21 G. 3. c. 10. § 13. "the payment of any of the rates and duties on houses, windows, and lights, shall not entitle the person so paying the same to a settlement."
10. A *rigger*, living at *Sheerness*, who pays the six-pence a quarter, which is stopped out of the pay of the people belonging to *Sheerness* dock-yard, for the relief of the poor of the vill of *Sheerness*, does not thereby gain a settlement, for this is not a public tax within the meaning of the act, *R. v. Friendsbury*,
ii. pl. 401.

III.

Of the Assessment and Payment.

11. The words of the statute being, "charged with and pay" an *assessment*, without *payment*, will not gain a settlement, *R. v. St. Nicholas in Abingdon*,
Skin. 620.
12. *S. P. Talbourn v. Boston*,
Salk. 523.
13. The assessment, though illegal and void, will not impede a settlement, if it be paid, *St. Giles's Cripple-gate v. St. Mary Newington*,
1 Sess. Cas. 22.
14. The word *taxes* in the statute, in its proper signification, means such as are chargeable on the tenant, and therefore the tenant, or person occupying the house, ought to be rated, *R. v. Lancaster*,
19 Vin. 4. 384.
15. But if the assessment be made on the house, and not expressly on the person occupying it, it is sufficient, *St. Mary-le-Moor v. Heavytree*,
Salk. 478.
16. Therefore where a person lived at a place called "*Roscoe's* tenement," and was assessed to the poor's rate under the title of "occupier of *Roscoe's*," it was held a sufficient assessment on the person of the tenant, *R. v. Brickell*,
8 Mod. 38.
17. So also where a tenant was rated in this manner to the land-tax: "Occupier, late widow *Hooper's*, now *John Hind's*," and to the poor's rate in this manner: "Occupier of late *John Hooper's* tenement," it was held a sufficient rating of *John Hind*, the tenant, *R. v. Uffculme*, *Burr. S. C. 430.*
18. So also under an assessment made in this manner: "*Thomas Clifford or tenant*," if the succeeding tenant pay the taxes thus assessed, and take a receipt for them from the overseers in his own name, it is equivalent to naming him in the rate; for it is not necessary to the gaining of this kind of settlement, that the occupier should be expressly named, *Painstwick v. Cirencester*,
Burr. S. C. 465.

19. Therefore an assessment of the poor's rate in these words only, "late Low-bridge's house, &c.," is an assessment on the tenant, whatever his name may be, *Abbey v. Walsall*, *Cald.* 35.
20. So also an assessment thus, "Occupier, late Mr. Hippeley's, &c.," is an assessment on the tenant, *R. v. Chew Magna*, *Cald.* 365.
21. So also where an assessment was made in the name of a former occupier, who, to the knowledge of the parish officers, was dead, but the poor's rate continued in his name, the succeeding occupier, by paying the rate thus assessed, shall gain a settlement, *R. v. Heckmondwike*, *Cald.* 108.
22. Same point, *contra*, *King'sfair v. King's Swinford*, *Salk.* 523.
23. For it is not necessary that the tenant should be rated by name; if he is virtually rated, and pays, it is sufficient, *E. v. Stan-bridge*, *Burr. S. C.* 627.
24. And, under certain circumstances, the Court will even intend that the tenant was rated. Thus where the collectors demanded payment of the rate from the tenant; and, on his refusing to pay, on account of his house being included in another levy, they show him a paper writing, and read over to him the sum he was to pay; and, on his continuing to refuse payment, they levy the money by distress, and he afterwards pays the rates for the house; the Court, until the contrary be clearly proved, will intend that the tenant was rated, *R. v. St. Issey*, *Burr. S. C.* 326.
25. So also a tenant, whose name has been once introduced upon the land-tax rate, though it is taken off in the same year, in consequence of his poverty, and at his own request, yet he is still considered as rated, if they put no other person on the rate, notwithstanding the landlord had been previously rated, *R. v. Endon*, *Cald.* 374.
26. For the land-tax is a tenant's tax, as between him and the public, and therefore where both the landlord's and the tenant's names appear upon the rate, it is a *prima facie* rating of the tenant, *R. v. St. Lawrence*, *Cald.* 379.
27. And therefore, in an assessment of the land-tax, where the names of both landlord and tenant are inserted, but it does not appear that either of them are expressly rated, if the tenant pay the tax, he shall thereby gain a settlement, *R. v. Mitcham*, *Cald.* 276.
28. But although the land-tax is a tenant's tax, as between him and the public, yet if the names of both landlord and tenant appear upon the rate, and the receipt given to the tenant states that the sum paid was assessed upon the landlord, it is a rate upon the landlord, and the tenant, by paying it, does not acquire a settlement, *R. v. St. James, Bury*, *Cald.* 385.
29. If an assessment be made of the land-tax, and, in the collector's books, the name of the landlord be placed under the column, "LANDHOLDERS RATED," and the name of the tenant under the column "NAMES OF OCCUPIERS," the assessment is made upon the landlord, and not upon the tenant, *R. v. Carshalton*, *Burr. S. C.* 809.
30. Same point, *R. v. St. John, Southwark*, *Cald.* 62.
31. So also where a house was known by the name of "Waynllloyd," and the land thereto belonging was rated to the poor's rate by the name of "Waynllloyd," but always paid by the landlord, and repaid by the tenant, and therefore the overseers, ignorant who it was that occupied the premises, or whether they were occupied at all, it was held, that this was a rate upon the landlord, and not upon the tenant, *R. v. Llanagarmarch*, *2 Term Rep.* 628.
32. And where A. being a certificated pauper living in the parish of B. was thus assessed, "A. to bring security for one shilling and sixpence," which sum A. paid to the churchwarden, but which sum was not figured in the rate-book until it was received, it was held not a sufficient rating, *St. Olave's v. Warblington*, *Burr. S. C.* 787.
33. But where the title of the rate was "so much in the pound," and the tenant's name and yearly rent were inserted in the rate, it was held a sufficient rating of the tenant, although no particular sum appeared to be assessed, *R. v. Carhampton*, *Dougl.* 621.
34. But whether landlord or tenant be rated, is a question of fact to be found by the justices at sessions; and if they state it as a fact, the court of King's Bench is precluded from considering whether they have drawn a right conclusion, *R. v. Folkstone*, *3 Term Rep.* 503.
35. It is not necessary that the assessment should be for a whole year; the being assessed to two quarters is enough, *Bramley v. Arnley*, *Burr. S. C.* 75.
36. Nor is it necessary that the estate assessed should be such, as will entitle the person occupying it to gain a settlement by estate, *R. v. Worth*, *Burr. S. C.* 90.
37. The person assessed must also pay the tax to gain a settlement, *Solingtonham v. Worpleston*, *Folly*, 128.
38. Same point, *R. v. St. Culbert's*, *Burr. S. C.* 817.

39. Therefore an *assessment* of the poor's rate on the *landlord* of a house, and *payment* by the *tenant* will not gain a settlement, though the payment was made by the tenant on the demand of the overseers, *R. v. Surrat*, *Burr. S. C. 73.*
40. Even although the person assessed is the overseer himself who made the rate, and received the money from the tenant, *R. v. Bramshaw*, *Burr. S. C. 98.*
41. So where, after the death of the landlord, an assessment of the poor's rate was made thus "Occupier of the late Mr. *Hippesley's*, &c." and the pauper, who was one of the personal representatives of Mr. *Hippesley*, received from the tenant a third of the rent in his own right, and twice paid the rate to the overseers, it was held he did not gain a settlement; for the rate is on the occupier, and the payment by the landlord, *R. v. Chew Magna*, *Cald. 365.*
42. So where a father was assessed in his own name and right, and gave up the house to his son, on condition of being maintained by him, and the son took possession of the house, and paid the taxes, it was held that he gained no settlement, for though the son paid, the father was rated, *R. v. Lower Walton*, *Burr. S. C. 100.*
43. But where a son went to live with his mother as part of her family, in a parish where she had a house and a small parcel of land, which she occupied herself, and while he lived with his mother he was in two rates on houses and lands only, and not on personal estate, and thereby charged as occupier, it was held he gained a settlement by paying such rates, although the land belonged to his mother, *Stapleton v. Stoney Stanton*, *Burr. S. C. 649.*
44. And where the tenant is rated, and also pays, he thereby gains a settlement, although the money is repaid to him by his landlord, *R. v. Chidingfold*, *Burr. S. C. 415.*
45. Same point, *R. v. Fulham*, *Burr. S. C. 488.*
46. Thus if a landlord of a house agree to pay all taxes except the window tax, but the tenant is rated in the parish books, and once pays the poor tax, he thereby gains a settlement, although he pay it for his landlord, who afterwards repays it to him, *Openshaw v. Gorton*, *Burr. S. C. 532.*
47. So if the *tenant* be rated, and abscond, and his landlord desire the collectors to levy it by distress lest he should lose the money, and on their going to the premises a friend of the tenant's gives them a guinea, out of which they take the amount of the tax, this is equal to payment by the tenant, and he thereby gains a settlement, *R. v. Bridewater*, *5 Term Rep. 550.*
48. If an artificer in his majesty's service be rated by the parish, and pay the tax to which he is so rated, he thereby gains a settlement, notwithstanding 3 W. & M. c. 11. § 4. *R. v. St. Mary Whitechapel*, *Cald. 34.*
49. The act for regulating the right of voting does not, in the form of assessment that it gives, prevent parishes from rating landlords, or other persons by name, *R. v. Endon*, *Cald. 374.*
50. If a town or parish is, for the convenience of the overseers, divided into twelve divisions, under the superintendence of so many overseers respectively, each of whom copies the names, out of the general rate, into a separate book of such of the inhabitants assessed as are within his district; and it is the custom of the parish for each overseer to add such names to his book as ought to be inserted in the general rate, such addition not being in fact made till the next year, but in the meanwhile the general rate is from time to time ordered to be collected, with the additions; a person paying the rate, whose name is afterwards added in the overseer's book, does not thereby gain a settlement; but if his name had been so added before he paid the rate, he would gain a settlement, *R. v. Edgbarton*, *6 Term Rep. 540.*
51. If the parishes of a city are incorporated for the purpose of maintaining the poor, a person who resides in one parish, and is rated in another, does not, by paying such rate, gain a settlement in either parish, *R. v. St. Michael at Thorn in Norwich*, *6 Term Rep. 536.*
52. Payment by one who was assessed to a church rate upon householders only, and not upon the parishioners at large, will nevertheless gain a settlement, *R. v. St. Bees*, *9 East, 205.*
53. The justices at sessions must state whether the landlord or the tenant was the person rated in the parish books; and if they do not, the court of king's bench will send the case back to be restated, *R. v. Rainham*, *5 Term Rep. 340.*

SETTLEMENT BY SERVING AN OFFICE.

- I. *The Statutes.*
- II. *The Office.*
- III. *Time and Place of serving it.*

I.

Of the Statutes.

1. By 3 W. & M. c. 11. § 6. "if any person inhabiting any parish shall, for himself and on his own account, execute any public annual office or charge in the parish during one whole year, he shall thereby gain a settlement."

II.

Of the Office.

1. The office of *constable* chosen by a leet jury, for the tithing of a parish, and regularly presented to the office at a court leet, is an annual office, the serving of which for a year will gain a settlement, *R. v. Winterbourn*, ii. pl. 241.
2. The office of *constable of a city* consisting of several parishes, and the duties of which office extend in and through all parts of the city, is an annual office, and will gain a settlement in the parish where such officer resides, *St. Maurice v. St. Mary Callender*, ii. pl. 237.
3. The office of *warden of a borough*, exercised in the parish where such officer resides, and also in the other parishes within the borough, is exercising an annual office in that parish where he resides, *St. Mary v. St. Lawrence in Reading*, ii. pl. 231.
4. The office of *parish clerk*, though appointed by the parson, is an annual office, *Gatton v. Milwich*, ii. pl. 232.
5. The office of *deputy parish clerk* is an annual office, although the deputation is made without licence from the ordinary, *Pont v. Bourne*, ii. pl. 236.
6. The office of *petty constable* is an annual office, and will gain a settlement though served by deputy, *R. v. Hops Mansel*, ii. pl. 244.
7. The office of *sexton*, to which the party is elected at a vestry, by the proprietors of seats in a church or chapel, in the presence of the churchwardens, and on the recommendation of the minister, is an annual office, the serving of which will gain a settlement, *R. v. Liverpool*, ii. pl. 245.
8. The office of *collector of the land tax*, is a sufficient office to gain a settlement, for it is not necessary that the office should be a parish office; any office is sufficient, so that, by the notoriety, it may be presumed that the parish had notice of the person's being come into the parish, *R. v. Hammond*, ii. pl. 233.
9. The office of *collector of the duties on births and burials* is therefore an office, the executing of which will gain a settle-

ment, for its duties oblige the collector to go from house to house in the parish, *Risham v. Cook*, ii. pl. 254.

11. The office of *tything-man*, appointed by the steward of a leet, although not sworn in until half the year is expired, will gain a settlement, *Holy Trinity v. Garsington*, ii. pl. 235.
12. The office of *borsholder of a borough* is an office that will gain a settlement, *Wingham v. Schlinge*, ii. pl. 238.
13. Where a pauper was legally sworn in as a borsholder at a court leet, and, after executing the office for a few days, he was afterwards irregularly by two magistrates discharged from executing his office, and another person appointed; but he acquiesced in this, and did not, in fact, afterwards execute the office: held, that this was not executing an annual office within the parish, so as to confer a settlement, *R. v. Holy Cross, Westgate*, ii. pl. 250.
14. The office of *bailiff or ale-taster* of a borough, to which a person is elected at a court leet, will gain a settlement, *R. v. Whitchurch*, ii. pl. 240.
15. The office of *hog-ringer* of a parish, to which the party is appointed for a year at the court leet of a manor, the duties of which office is to attend the open commons, to see that all hogs turned thereupon are rung, and to impound such as are not rung; receiving one penny for impounding, and sixpence for ringing each hog; is an annual office in the parish, and will gain the party a settlement, *R. v. Whittlesea*, ii. pl. 246.
16. But the appointment of a master of a workhouse by the parish officers and vestry, pursuant to the statute 9 G. 1. c. 7., which enables the parish officers and parishioners, &c. to contract with any person for the management of the poor in the workhouse (and who did contract with the pauper to manage the poor in the workhouse, and teach the children to spin, &c., at a yearly salary, and after some years' service dismissed him at a quarter's notice) is not a public annual office or charge within 3 W. & M. c. 11. s. 6. the executing of which for a year will confer a settlement, *R. v. Merham*, ii. pl. 249.
17. Yet if the sessions find that the pauper was legally appointed governor of the workhouse at an annual salary, and that the office of governor is a public annual office, and that the pauper served it for a year, he will thereby gain a settlement in the parish, *R. v. Ilminster*, ii. pl. 247.
18. Where eight parishes were incorporated, and had a common workhouse, under the

- 22 G. 3. c. 85., and a person was appointed by one of those parishes governor of the poor of that parish for one year, and served for three years under that appointment, residing in the workhouse: held, that no one parish singly had power to appoint a governor of its poor, and that the pauper did not, by serving under that appointment, gain a settlement, *R. v. Hambleton*, ii. pl. 251.
19. *Semble*, That if he had been appointed by all the parishes, he would not have gained a settlement; § 39 of the 22 G. 3. c. 83. providing "that nothing in the act contained shall alter or affect the settlement of any person or persons whomsoever." *Id. ibid.*
10. The office of *schoolmaster* to a charity school established by private donation, appointing ten pounds a year to be paid to the vicar for the use of the schoolmaster, does not gain a settlement, *R. v. Milbourn*, ii. pl. 239.
20. Nor the office of *deputy tithingman*, *R. v. Allcannings*, ii. pl. 242.
21. Nor the office of *curate* or *sequestrator*, until the bishop shall release the vicarage from the sequestration, *Helsington v. Over*, ii. pl. 243.
22. And if a *curate* officiate in a parish for above a year, under the bishop's licence to perform the office of a curate at a certain annual stipend, yet he is not such an annual officer as thereby to gain a settlement, *R. v. Wantage*, ii. pl. 248.
23. The party must be legally placed in the office, or he cannot gain a settlement by serving it, *R. v. Winterbourn*, ii. pl. 241.
24. A parish-clerk, appointed by the parson without deed is a good appointment, *Gatton v. Milwich*, ii. pl. 232.
25. A party, by serving an office of clerk to a chapel situated in an *extra-parochial* vill, may gain a settlement in the adjoining parish if he reside there, and if part of the duties of his office of clerk be exercisable within that part of the parish where he resides, *R. v. Amluck*, ii. pl. 256.
26. So an appointment, by commissioners, of a collector of duties is a good appointment, although without the knowledge or concurrence of the parishioners, *Bisham v. Cook*, ii. pl. 234.
27. So an appointment by a parish-clerk of a deputy is good, without licence from the ordinary, *Peak v. Bourn*, ii. pl. 236.
28. But an appointment to the office of constable, by a court leet, will not gain a settlement, although the party is *sworn in*, unless he be also regularly presented at the leet, *R. v. Winterbourn*, ii. pl. 247.
29. So also where a certificate-man had a

wooden tally left at his house, by the preceding *borsholder*, as a token that he had been chosen, at the court leet of the manor, *borsholder* of the borough; yet never having been presented, admitted or sworn in at the court leet, it was held that he was not legally placed in the office, *Wingham v. Sellings*, ii. pl. 236.

30. See also where the pauper at a *Michaelmas* court leet, holden by adjournment for the manor and borough of *Chumleigh*, on the 16th November, 1792, was appointed to the office of *de taster* of the borough, and duly sworn according to the custom of the manor to execute the said office for one year next ensuing, or until he should be lawfully discharged from the same, and accordingly entered upon and executed such office until the 1st November, 1793; when at a similar court, holden by adjournment for the said borough, a new officer was appointed in his stead, and sworn in the same manner, it was held insufficient to gain a settlement; for it is not an appointment for year from one moveable feast to another but from one court until it should please the steward to hold another, *R. v. Bow*, ii. pl. 250.

III.

Time and Place of serving the Office.

31. The office must be executed for a year; and therefore if the officer, though regularly appointed to the office, become chargeable to the parish before the year expire, he cannot gain a settlement as having served the office, *Fittleworth v. Pulborough*, ii. pl. 252.
32. So also, although the custom of a parish be to serve the office of tythingman for more than half a year under one appointment, yet serving the office for two half years at different times will not make service for a year, *Cold Ashton v. Woodchester*, ii. pl. 251.
33. If a church-yard lie in two parishes, the *Sexton* shall gain a settlement in the parish in which he resides, although a part of the church lies within that parish, *R. v. Liverpool*, ii. pl. 25.
34. The pauper, at an adjournment of court leet, holden on the 16th November 1792, was appointed to the office of a *taster* of the borough, and duly sworn "to execute the said office for one year the next ensuing, or until he should be lawfully discharged therefrom;" and he executed the office until the adjournment another court leet, holden on the 1st N

under, 1798; and it was holden that he did not thereby gain a settlement, for he did not execute it during one whole year, *R. v. Bos*, ii. pl. 255.

SETTLEMENT BY HIRING AND SERVICE.

- I. *The Statutes.*
- II. *Who may be hired.*
- III. *Of the Contract of Hiring.*
- IV. *Of general Hiring.*
- V. *Of special Hiring.*
- VI. *Of customary Hiring.*
- VII. *Of retrospective Hiring.*
- VIII. *Of conditional Hiring.*
- IX. *Of several Hirings.*
- X. *Service in different Places.*
- XI. *Service with different Masters.*
- XII. *Marriage during Service.*
- XIII. *Absence from Service.*
- XIV. *Evidence of Hiring and Service.*

I.

Of the Statutes.

1. By 35 G. 3. c. 101. and 13 & 14 C. 2. c. 12. "persons settled by hiring and service, &c. in one parish, coming to reside in another on any tenement under ten pounds a year, may, on becoming actually chargeable within forty days, be removed to such parish where they were last legally settled as servants."
2. By 5 W. & M. c. 11. § 6. "if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be deemed a good settlement therein, although no notice be given as the statutes require."
3. By 8 & 9 W. 3. c. 30. "no person so hired shall be deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same house, during the space of one whole year."
4. By 9 & 10 W. 3. c. 11. "no certificated person shall be capable of gaining a legal settlement by hiring and service."
5. By 12 Ann. st. 1. c. 18. § 2. "if any person shall be a hired servant to or with a certificated person, such person, by being hired by or serving such certificated person as a servant, shall not gain any settlement in the parish by such hiring and service; but every such servant shall have his settlement as if he had not been hired to such certificated person."
6. By 38 G. 3. c. 54. § 24. no servant to a certificated member of a benefit society, shall gain a settlement by such hiring and service.

II.

Who may be hired as Servants.

7. A widower, although he has children living may gain a settlement by hiring and service, provided those children are emancipated, and have gained settlements in their own right; for although the 5 W. & M. c. 1. § 6. precludes from a settlement of this kind, every person who is married or has any child or children, yet it only means persons who have wives or children that may become chargeable to the parish in consequence of his settlement, *Asibony v. Cardigan*, ii. pl. 267.
8. But a widower, having a son who has no settlement of his own, cannot hire himself as a servant so as to gain a settlement thereby, *R. v. New Forest*, ii. pl. 263.
9. So also a daughter who is emancipated from her family, and has gained a settlement in her own right, may, by living with her father for a year as a hired servant for 10s. a-year and what she could get by her extra service and labour, gain a new settlement by such hiring and service, *Miscenden v. Chesham*, ii. p. 258.
10. A daughter whose father is a day-labourer, may be a hired servant to her father by agreeing with him to do the offices of a servant for a year for her board and lodging, and such profits as she can make by keeping fowls, and what she can earn by her own labour, and that if what she gets do not amount to 4l. a year, he will make up the difference, *R. v. Chertsey*, ii. pl. 299.
11. An infant pauper may gain a settlement by hiring and service with his father, *R. v. Chelmsford*, *R. v. Window*, ii. pl. 266.
12. If a married man agree conditionally to become the servant of another, and between that time and the performance of the condition on which his being hired depends, his wife dies without issue, he is an unmarried man at the time of hiring; and by serving a year gains a settlement, *R. v. Bank Newton*, ii. pl. 259.
13. If a servant be unmarried at the time when he is hired for a year, he gains a settlement by a year's service, although he marry before the service commences, *R. v. Allendale*, ii. pl. 261.
14. A wife whose husband is abroad may gain a settlement by a hiring before his death, and a continued service under such hiring for a year after his death, although his death was not known until after the year commenced, *R. v. Hensingham*, ii. pl. 260.
15. But if a servant marry while serving under a general hiring, the service of such a servant is only good for the current year,

for in each succeeding year a new hiring is presumed, and then it seems the disability will attach, *R. v. St. Giles, Reading*,

ii. pl. 420.

16. Therefore where the pauper was hired at *Martinmas*, to serve in husbandry for a year at 8*l.* a year, and married in the middle of the year, and then agreed to serve his master as a hind for a year from that time, at 5*s.* a week, and to live out of the house at another farm belonging to his master, it was held that these two hirings were distinct, and could not be connected so as to give a settlement, because he had not lived a year under the first hiring, and was a married man when the second hiring took place, *R. v. Great Chilton*, ii. pl. 383.

17. The son of a certificated person, serving under a hiring for an year in a *extra-parochial place*, does not gain a settlement; and therefore he cannot be hired as a *servant* in the certificated parish, so as to gain a settlement there, *R. v. Collingburn Ducis*, ii. pl. 262.

18. Although he has previously quitted the certificated parish, served a year in the certifying parish, and part of a year in a third parish, provided he afterwards return to his family in the certificated parish, *R. v. Ingworth*, ii. pl. 764.

19. A deserter from his majesty's service cannot gain a settlement by a hiring and service for a year, *R. v. Norton*, ii. pl. 264.

20. An invalided soldier at the depot, who, in pursuance of an order from government, had leave of absence upon agreeing to relinquish his pay for the time, which leave was renewed from time to time, by furlough for different periods of three, six, and four months, which he procured by going to the depot for them, was held not to gain a settlement by hiring and service for a year, not being *sui juris* lawfully to hire himself within the stat. 3 W. & M. c. 11., though before such hiring the mistress applied to the commanding officer at the depot, to know if he might hire himself for a year; and was told that he might, and during the year's service he received no pay, nor was called upon, nor did perform any military duty, *Bayley, J. diss.* and *Dampier, J. absent.* *R. v. Beaulieu*, ii. pl. 265.

21. A. being enrolled as a substitute in the militia, hired himself for a year, and performed a year's service under that contract: Held, that as it did not appear that the pauper at the time of hiring informed the master that he was a militia man, no settlement was gained by serving a year under such contract, *R. v. Holsworthy*, *Addend.*

22. By 13 G. 2. c. 29. § 7. "no servant employed in the *Foundling Hospital* shall gain any settlement in the parish where such hospital is situated, by virtue of such hiring and service."

23. By 9 G. 3. c. 31. § 8. "no person employed in the *Magdalen Hospital* as a hired servant shall, by reason of such service, gain any settlement in the parish where such hospital is situated."

III.

Of the Contract of Hiring.

24. A hiring made in an extra-parochial place is sufficient, *R. v. St. Peter's, Oxford*, ii. pl. 268.

25. A hiring cannot be intended unless there be a contract between the parties, so as to make them stand in the relation of master and servant to each other, *Gregory Stoke v. Pitminster*, ii. pl. 269.

26. Therefore where a gentleman sent his foot-boy to live with a barber, in order that he might learn the art of shaving and dressing hair, and the barber was to have the benefit of the boy's work, it was held not to be a hiring and service, because there was no contract for that purpose between the boy and the barber, *R. v. Hamlet of Walton*, ii. pl. 267.

27. So also where a young girl was sent to by a relation who told her that if she would live with her she should have her meat, drink, washing, and lodging, and the girl, accepting of these terms, lived with her relation for four years; the Court held, that in order to gain a settlement under a hiring and service, there must be a mutual contract, equally binding on both the parties; but that in the present case there was no agreement on the one side to *hire*, or on the other to *serve*; but that it was merely an encouragement to the poor girl, that if she would live with her relation, she would maintain her, *Gregory Stoke v. Pitminster*, ii. pl. 269.

28. But by Lord Kenyon when this case was determined, these questions were not discussed or understood so well as they are at present, *R. v. Worfield*, 5 T.R. 508.

29. And therefore where a pauper who was living unhired in the service of A. was asked by B. if she would go and live with him and take care of his child, which the pauper accordingly did, and when she had been there a few days he promised to find her in meat, drink, and clothes, with which she was satisfied, it was held a sufficient hiring, *R. v. Worfield*, ii. pl. 302.

30. But where a poor girl went to live with her aunt, and during her residence there worked in the day-time with a person in

the adjoining parish in the business of *burying cloths*, for which she was to have so much a week in *winter*, and so much in *summer*, but the employment was continued or discontinued at the end of each week, at the pleasure of the parties; it was held, that she was a mere *day-labourer*, and not a *yearly servant*; for there was no contract to serve; and therefore she was not, as a servant must be, always under the government, discipline, and controul of the master, *R. v. Wrington*, ii. pl. 270.

31. So where a son agreed with his step-father to live with him in his house and to work in his trade of a button-maker, and be paid at the rate of one penny a gross for the buttons he should make, deducting 6s. a week for his meat, drink, washing, and lodging; it was held that the pauper was not a hired servant but a workman hired to work by the piece, *R. v. St. Peter's Dorchester*, ii. pl. 291.

32. So where the pauper who had been bred a plumber and glazier, let himself to a master in that business at the wages of 6s. a week, board, lodging and washing, summer and winter, and on his going to sleep out of the house demanded 6d. a week more, it was held a hiring at so much a week and not a hiring for a year; for the words "summer and winter" only import that the wages were to continue the same, and not be varied according to the season, and do not import that the contract was to continue during the whole year, *R. v. Dedham*, ii. pl. 292.

33. A hiring at 6s. a week for the *winter*, and 5s. a week for the *summer*, nothing being said as to the duration of the service, is not a yearly hiring, *R. v. Warminster*, ii. pl. 287.

34. So where the mortgagee of a small estate, on the mortgagor's falling under misfortunes, took his son into his family from charity, and gave him his meat, drink, lodging and clothes, for six years, during which time he was employed in running of errands, and doing whatever the servants of the house thought fit to bid him, but no contract was ever made; it was held he did not gain any settlement by such service, *R. v. Weyhill*, ii. pl. 271.

35. So also where Captain Howe brought a female negro slave from America to England, where she continued to live with him in the capacity of his servant for several years, until he died; after which she was baptized, and continued to live with Mrs. Howe, the widow and executrix of her former master; it was held that she gained no settlement, because there never was any contract to serve as a hired servant, *R. v. Thames Ditton*, ii. pl. 272.

36. So where a boy of eleven years of age went to live with his uncle, a tailor, and worked for him two years, and learned the business, at which time the uncle proposed to take him apprentice, but the boy declined, and continued to work with him as before, until he was seventeen years of age, the uncle providing him with board, lodging, and necessities; the Court said that a contract was necessary, and therefore he gained no settlement by this service, *R. v. St. Mary Guildford*,

ii. pl. 273.

37. So where a man went to an inn with the knowledge of the master, to assist one of the waiters who was ill, and continued there, boarding and lodging, nineteen months, at the end of which time the waiter went away, and the man continued in his place as he had done before, but without making any agreement with the master; the Court held that he gained no settlement by this service; for though it is not necessary that the hiring should be by the master himself, yet there must be a contract by this authority; and in this case the man went merely as helper to the waiter, *R. v. St. Matthew Ipswich*,

ii. pl. 274.

38. So where a man who, after living with an uncle upon charity, is hired as a yearly servant by another person, but returns upon a promise of the uncle that if he would come and live with him as before, he would make it better for him than a common service, and that if he continued with him for life, he would leave him his farm and stock; and he accordingly serves his uncle for several years, but receives no wages, he gains no settlement thereby; for there is no contract of hiring between the parties, *R. v. Stokesley*, ii. pl. 275.

39. So where a pauper was placed by the parish with a parishioner, upon an agreement between the latter and the parish-officers to find board, washing, and lodging for the pauper at 2s. 6d. a week, and that the pauper was to do what he was set about, it was held that it does not constitute the relation of master and servant between such parishioner and the pauper, so as to enable the latter to gain a settlement by hiring and service. — Neither does such a relation arise by implication from a continuance of services by the pauper to the parishioner; living with him as before, after the parish had refused any longer to continue parochial relief; and the pauper (who was a Greenwich pensioner), going there twice a year without asking or receiving the leave of the parishioner; the latter however not refusing leave when

- informed of the other's going, *R. v. Rickingham*, ii. pl. 276.
40. A poor boy allotted by parish officers to a parishioner, who handed him over to another person, by whom the boy was told that he was to stay with him a year, to which the boy made no objection, *conceiving himself bound to accept such service*, does not gain a settlement by serving under this supposed obligation for a year, *R. v. Stowmarket*, ii. pl. 277.
41. No settlement can be gained by serving under a contract for four years, with liberty for the servant to leave for a week every year to see his friends, *R. v. Rushulme*, ii. pl. 278.
42. Under a hiring and service for a year the servant gains a settlement, though by practice of the manufactory, when he has finished his appointed week's work, and on *Sundays*, he may go where he pleases without asking leave: for it is an express contract for a year without an express exception, *R. v. Horwicks*, ii. pl. 279.
43. A statute fair being held generally on the day after *Michaelmas*, except when old *Michaelmas* falls on a *Saturday*, and the fair being then held on a *Monday*; held that a hiring from such *Monday* till old *Michaelmas* day following, is not a yearly hiring under which a settlement can be obtained, *R. v. Standon*, ii. pl. 351.
44. A hiring for so much a week for as long a time as the master and servant could agree, is only a weekly hiring, *R. v. Mitchenham*, ii. pl. 351.
45. Hiring for a year at 13s. 6d. per week, and to be at liberty to be absent during the sheep-shearing season, but to find a fit man at his own expense to do his work during his absence, *but his own wages to go on during the whole time*, will not gain a settlement, *R. v. Arlington*, ii. pl. 330.
46. A pauper was hired three weeks before *Martinmas* at 4s. wages, and received 1s. earnest, but no period was mentioned for the duration of the service. The pauper went into the service a week after *Martinmas*, and upon the same day his master told him that it was not the custom to hire servants in that parish for more than fifty-one weeks, that he forgot to mention it at the time he hired him, and, therefore, that if he had no objection, he would hire him again for fifty-one weeks, and gave him another shilling for earnest. The pauper accepted it, and remained in the service till the following *Martinmas*. There not having been a year's service, the sessions held, that there had been a dissolution of the original contract, and not a dispensation of the week's service. Held, that that was a question of fact for the sessions, and they having determined it, the Court refused to disturb their decision, *R. v. Bottesford*, ii. pl. 286.
47. *A. B.* at ten years of age, went to *C. D.* for meat and clothes as long as he had a mind to stop; he was to do what he could, and what he was bid: *A. B.* remained two years with *C. D.* upon these terms, Held, that there was no yearly hiring, and therefore no settlement gained by the service, *R. v. Christ's Parish*, ii. pl. 285.
48. Under certain circumstances, a contract may be presumed; as if a servant in husbandry serve a year, it is strong presumptive evidence that he served under a contract of hiring for a year, *R. v. Lyth*, ii. pl. 485.
49. So if a servant live three years in service with the same master, it is presumptive evidence of a contract of hiring for a year, although at first the servant was only hired for part of a year, *R. v. Long Wharton*, ii. pl. 484.
50. So also if a servant, after serving a year, part of which was under a retrospective hiring, continue in service another year, a contract of hiring for a year may be presumed, *R. v. Hales*, ii. pl. 485.
51. An unmarried man agreed on the 7th of October 1803, to serve a master for the year, at 9s. 6d. per week; and received those wages till the 13th of October 1804, three or four days before which (having in the mean time married) he agreed with his master to serve him for another year at 10s. a week, which sum he received on the 20th of October, and served more than a year afterwards. Held that this was evidence upon which the sessions might draw the conclusion, that the original hiring was for the space of a year, and not merely for the current year of 1803, and that there was a sufficient service of a year, coupled with such hiring, to gain a settlement, *R. v. Overnorton*, ii. pl. 280.
52. Where a poor boy of *A.* agreed with a parishioner of *B.* to go home with him, and to do whatever he was bidden, (nothing being said about wages or time, and no subsequent agreement being made,) he gains a settlement by a year's service in *B.* although the overseer of *A.* a day or two after such agreement, undertakes with his master to find the boy in clothes, for which the master agrees to pay to the overseer a certain sum per week, *R. v. Danton*, ii. pl. 281.
53. The pauper was hired to serve as a servant in husbandry from *Michaelmas* 1821 to *Michaelmas* 1822 at weekly wages, and if he and his master could not agree for the harvest, he was to harvest for himself.

Previously to the harvest, the master offered the pauper 5*l.* for the harvest, which he accepted, and continued in the service the whole year. Held that this was an exceptive and not a conditional hiring, and that no settlement was gained, *R. v. Althorne*, ii. pl. 336.

54. An agreement was made between *A.* and *B.* that the latter should serve for three years at 1*s.* per day when *B.* had work to do, and when he had no work *A.* was not to be paid. At the time when the agreement was made, the master told the servant that he should not have work for him during the whole year, and particularly during the winter, and that when he had not work for him he might get work from other people; Held that this was an exceptive hiring, and that the pauper, having worked for other people during the winter season when his master had no work, and having at other times worked for his master during two successive years did not gain a settlement, *R. v. Poleworth*, ii. pl. 337.

55. A pauper had been hired for three years at 30*l.* per annum as a looker. The duty of a looker is to superintend the flocks and fences of his employer. When he was hired his master told him that he should not have full employment for him, but that he would employ him as much as he could. He was not to do any work for his master other than that belonging to the office of looker, without receiving extra wages. During the first year and three quarters he worked for his master only, but was always paid extra for any work not belonging to his office of a looker: Held that there was not any hiring for a year, and that the pauper did not gain a settlement by service under such a living, *R. v. Lydd*, ii. pl. 338.

56. The court of king's bench will not upon a mere statement presume a hiring for a year; it is a fact to be found by the jury, *R. v. Seacroft*, ii. pl. 181.

57. To make a valid contract of hiring and service it is not absolutely necessary that the contract, when by deed, should be executed by the master: it is sufficient that he accepted the services on the terms of the deed; and therefore where the pauper executed a deed by which he became bound to serve the master for a year, and afterwards entered into and continued in his service for that period; it was held that such deed, although not executed by the master, ought to have been received in evidence to show the terms of the hiring, *R. v. Houghton-le-Spring*, ii. pl. 284.

VOL. I.

IV.

Of general Hirings.

59. But if there be a contract of hiring, although it be general, yet that is sufficient; for it shall, in such case, be construed to be a hiring for a year, *Wandsworth v. Putney*, ii. pl. 288.

60. Therefore where a boy of fourteen years of age went, without any contract, to live with a gentleman, and about two months afterwards the master told him that if he stayed a year and behaved himself well, he would the next year, give him full livery and wages; and the boy resided with him sixteen months afterwards, and received, on his going away, a guinea and a half from his master's partner; the court seemed to think that this was a sufficient general hiring, *Wandsworth v. Putney*, ii. pl. 288.

61. So also where a master agreed to give a boy meat, drink, washing, lodging, and clothes when he wanted, and the boy continued to serve under this agreement for two years and a half; the Court thought this a general hiring for a year, although no particular time was agreed on, and the boy apprehended that his master might turn him off, or that he was at liberty to go away from him at pleasure, *R. v. Wincauton*, ii. pl. 289.

62. So where a man happening to meet the head-keeper of *Rushmore Lodge* in *Crombourn Chase*, who had then lately parted with one *Edward Hill*, who had been for many years one of the keeper's servants, or under-keepers, and the head-keeper said to him, "Do you like the life of a keeper?" and being answered in the affirmative, said further, "Then go into *Ned Hill's* place, and you shall want no encouragement; I will give you a suit of clothes directly;" this was held a sufficient hiring for a year, *R. v. Berwick St. John*, ii. pl. 290.

63. So also when a boy went into an inn, and asked the master whether he wanted a boot-catcher and driver, for that if he did he was willing to serve him; and upon which the master bid him go into the yard, and look after the horses; and on his going into the service was only found in meat, drink, and lodging, but received no wages: this was held to be a general hiring; and consequently, unless the contrary be proved, a hiring for a year, *R. v. Stockbridge*, ii. pl. 294.

64. So also where a barber of *Bath Easton* went to seek for work as a journeyman, and offered his services to a barber at *Devizes*, who agreed to give him meat,

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- drink, and lodging, as his journeyman, and, in lieu of wages, he was to have the *Christmas-boxes*, and he accepted these terms, but no particular or specific time was stipulated for his staying in the service; this was held a general hiring, *R. v. Bath Easton*, ii. pl. 296.
65. So also where a man agreed with an innkeeper "that the innkeeper should give him one shilling a week, as he had given other men, and the vails of the stables," but nothing was then said as to the time of service; but at the end of the year, his mistress said to him, "You have been here a year, I will pay you; to which he answered, "It is no matter, I may stay with you another year;" and his mistress replied, "Very well, *Sampson*;" this was held a good general hiring for a year, though at weekly wages, and although the servant apprehended that his master might have parted with him at any time on giving him reasonable notice; for neither the payment of the wages *weekly*, nor the apprehension of the servant, makes any difference, *R. v. Seaton and Beer*, ii. pl. 297.
66. So also where a man, on the death of his wife, went to his daughter who was in service, and applied to her to come and live with him, and do the offices of a servant for a year, and offered her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour, and that if it did not produce as much as she got in the place she was then in, he would make up the difference; it was held a good hiring for a year, *R. v. Chertsey*, ii. pl. 299.
67. So where a man was hired to a button-maker for eleven months, at ten guineas wages, and at the end of the eleven months the master paid him the wages, gave him half a guinea over, and said, "You have been a good servant, you may as well *stay on an end* in your place: the place suits you, and you suit the place;" and the man answered, "Very well, sir, I have no objection;" this second hiring was held a good general hiring for a year, *R. v. Maccleysfield*, ii. pl. 300.
68. So a hiring to serve at *8s. 9d.* a week, with a liberty of parting on a month's notice, is a general hiring, *R. v. Hampreston*, ii. pl. 301.
69. So also if a person meet a servant in place, and ask her whether her master had hired her again, and upon her replying in the negative, desired her to come and live with him and take care of his child, this is a general hiring, *R. v. Worfield*, ii. pl. 302.
70. But where a boy who, from the age of six to sixteen, was employed by his father-in-law in his trade of a button maker, the father-in-law taking all the profits of his labour, without any other compensation than maintenance, and such pocket-money as the father-in-law thought fit to allow, at the age of sixteen, insisted on a larger allowance for his labour, and the father-in-law agreed that he should live in the house and work as before, and be paid at the rate of *1d.* a gross for the buttons he should make, being the same as he paid other workmen, deducting at the rate of *5s.* a week for his board, washing, and lodging; the court held that this was not a general hiring; for it is merely the case of a workman hired to work by the piece, *R. v. St. Peter's in Dorchester*, ii. pl. 291.
71. So where a girl of thirteen years of age went and worked with a clothier in the business of burling cloth, by a weekly hiring of *1s. 6d.* a week in the winter, and *2s.* a week in the summer; the master telling her every Saturday night when he paid her her wages, that she might come the week following, which she did, and continued to work in this manner for a year and a half, returning every evening to her aunt's house in an adjoining parish, and residing with her on Sundays, it was held not to be a general hiring for a year; for to constitute the character of a *yearly servant*, the servant must be always under government, discipline, and control of the master; but this girl was a *weekly labourer*, and not at all in her master's service on nights or Sundays, *R. v. Wrington*, ii. pl. 270.
72. So where a plumber and glazier let himself at the wages of *6s.* a week, board, lodging, and washing, summer and winter, but after a service of eleven months, and on his master's informing him that he must lodge out of the house, he insisted on *6d.* a week more, which was allowed him, the court held that this was not a general hiring for a year, *R. v. Dedham*, ii. pl. 292.
73. So if a man agree to live with another for *2s. 6d.* a week, and to part at a fortnight's or month's notice; and receive his wages sometimes at the end of a week, sometimes at the end of a fortnight, and sometimes longer, as he wants money; this is not a general hiring, for the servant is under no obligation to serve for a year, *R. v. Bradninch*, ii. pl. 293.
74. So where a journeyman miller let himself by the month, at the wages of *8s.* a month, with liberty to depart at a month's wages or a month's warning, but that if he

continued in the service till harvest time, he should be at liberty during harvest month to let himself to any person he chose for the harvest month, and he let himself accordingly for the harvest; received his 8s. a week from his mistress, and paid her a moiety of his earnings; it was held not a general hiring for a year, *R. v. Clare*, ii. pl. 295.

74. So if a servant hire herself at the wages of 1s. 4d. a week, and board and lodging, for as long time as the master should want a servant, and when she had served seven weeks receive her wages, and so on as she wants money; this is not a general hiring for a year, *R. v. Kistack*, ii. pl. 298.

76. A hiring at 6s. per month with a month's wages or warning, is a monthly and not a constructive yearly hiring, and it is no more; if after serving for a time the mistress tell the servant, that if she would stay on she should have 8s. per month, and live on with a month's wages or warning as before, *R. v. Tollyhurst Knights*, ii. pl. 288.

77. If a husbandman serve for a year, a general hiring for a year may be presumed, *R. v. Lyth*, ii. pl. 483.

82. So if a servant live three years in the same service, although he was originally hired for part of a year only, *R. v. Long Wharton*, ii. pl. 484.

83. So also if a servant after serving a year, part of which was under a retrospective hiring, continue in service another year, a contract of hiring may be presumed, *R. v. Hales*, ii. pl. 485.

V.

Of special Hirings:

84. If a person be hired for a year to spin brick-yarn at the rate of 1s. 6d. a stone, to provide herself with meat, drink, washing, and lodging, where she pleased; this is a special hiring for a year, and by service for a year under it will gain a settlement, although the servant intended by the nature of the contract of working at so much per stone to be at liberty to work for any other master, *R. v. King's Norton*, ii. pl. 305.

85. A pauper agreed to serve as a brick-maker from Michaelmas to Michaelmas, and to make 70,000 bricks at a stipulated price: Held, that this was not a contract for a year's service absolutely, but to serve till the completion of the job, and that a settlement was not thereby gained, *R. v. Woodhurst*, ii. pl. 333.

86. A hiring for eleven months for 4l. 10s., and an agreement that the servant should give the master a month's service in, be-

yond the eleven months, is a hiring for a year; for it is nothing more than whether eleven months and one month make twelve months, *R. v. Milwich*, ii. pl. 306.

83. So if a man let himself for one year to a carpenter, under an agreement to receive no wages, but his master to teach him the trade during the said year, and to provide him with meat, drink, washing, and lodging; this is a hiring for a year, *R. v. Hitcham*, ii. pl. 309.

84. So where the father of a boy who was about fifteen years of age contracted with a tin-worker for his son to work at THE STAMPS for one year, at the yearly wages of 5l., and in pursuance of this contract the boy served the tin-worker by daily working in the stamps, except on holidays and Sundays, according to the custom of tinners; the court held this an entire contract for a year, notwithstanding the exemption from work on holidays, and his being free of his master on Sundays, for this was according to the custom of the country, and not an exception in the contract, *R. v. St. Agnes*, ii. pl. 310.

85. So also a hiring to serve for a year, although the servant is entered and sworn to serve as a substitute in the militia, and though accompanied with an agreement to be absent for a month during the year on his militia duty, and to find a person to do his work during such absence, or to make a deduction of it from his wages, if called out, and on his being called out the mistress did in fact make such deduction, is a good hiring for a year, *R. v. Westerleigh*, ii. pl. 312.

86. So also where the pauper hired himself, five weeks before Michaelmas, for a year, and at the time of the hiring it was agreed that his wages should be paid weekly at 8s. a week, and that, being a ballotted man in the militia, he should be absent for the month, and in lieu of that month should serve another at the end of the year; it was held a good hiring for a year, and that the servant gained a settlement, although he was absent thirty days in the militia, and did not serve the additional month, *R. v. Wincombe*, ii. pl. 315.

87. So if a man be hired to a wood screw-maker for a year, good earn good hire, which means that the pay is to depend on the work, to work for no other master, and to make screws at so much a gross, it is a good hiring for a year, and the servant will gain a settlement under it, though he absent himself from work very frequently during the year, if there be an implied liberty from the usage of the place that

servants so hired may absent themselves whenever they please, *R. v. Birmingham*, ii. 217. pl. 278.

88. So where the pauper went to a weaver, and asked him if he would teach him to weave counterpanes; to which the weaver replied, that he would teach him if he would work with him two years and a half or three years, and the pauper assenting to this proposal, it was agreed, that he should find him clothes, and that his earnings should be divided between them; the court held this a good hiring for a year, *R. v. Little Bolton*, ii. pl. 316.

89. But although Lord Mansfield in delivering the judgment on the above case said, that the agreement did not speak of the pauper as an apprentice, and therefore it was a good hiring as a servant, yet it is not to be intended that every such agreement is to be considered as a contract of hiring and service wherein the specific term "apprentice" is not used; for the contract must depend on the intention of the parties, to be collected from the whole of their agreement, *R. v. Laindon*, ii. pl. 507.

90. And the case of *R. v. Little Bolton* has only been adhered to avoid uncertainty, and on this ground only it was held that where the pauper agreed with a weaver to serve him for a year and a half and the master was to teach him to weave, and the pauper was to have half his earnings and find himself in every thing, he gained a settlement by serving a year under the contract, *R. v. Eccleston*, ii. pl. 325.

91. The pauper hired himself to a turner for a year, and was to be found in board, lodging, pocket-money, and clothes by his master, and his master to have the benefit of his work; but when six months of the service under this hiring had expired, they came to a new agreement, by which the pauper was to work by the piece, and to be paid by the piece for what he should earn, and to find himself in board, lodging, pocket-money, and clothes; and it was held that this was a good hiring for a year, *R. v. Alton*, ii. pl. 317.

92. But where a pauper was hired at *Martins* to serve in husbandry for a year, and in the middle of the year married, and some few days before the 1st May he and his master agreed that he and his wife should go as a hind to reside on and manage another farm belonging to the master in the same township, and should for a year from May-day receive 5s. a week, have the house to live in rent-free, and some other trifling perquisites, such as

persons in that capacity usually have; the second agreement was held to be a dissolution of the first contract, *R. v. Great Chilton*, ii. pl. 383.

93. The pauper went to the house of an inn-keeper, and agreed to live with him as hostler, at 4s. 6d. a week, and continued more than a year in the service. On his departure the publican told him, that as he had received vails, 4s. 6d. a week was too much, and the pauper agreed to accept after the rate of ten pounds a year in lieu of the 4s. 6d. a week; and this was held a good hiring for a year; for if there be any thing in the contract to show that the hiring was intended for a year, there a reservation of weekly wages will not control that hiring; but if the payment of weekly wages be the only circumstance from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring, *R. v. Newton Toney*, ii. pl. 318.

94. But a hiring at 3s. 6d. a week with meat, drink, washing, and lodging, and to part on a week's notice by either party, is not such a hiring as will confer a settlement; for it is not a hiring for a year, *R. v. Hambury*, ii. pl. 326.

95. And therefore where the pauper went to live with a livery-stablekeeper and post chaise-letter as under-hostler at 9s. a week without fixing any time for the expiration of such service, and some time afterward on a postboy going away, the pauper was turned over into his place at 3s. a week and the driving perquisites, to find him in victuals, and lodge in a loft in the stable yard; the court held that this was not good hiring for a year, *R. v. Odham*, ii. pl. 31.

96. So where nothing is said in a contract of hiring about time but a reservation of weekly wages, it is a weekly hiring and therefore where the contract was the servant to live with his master the letter finding him board and lodging and paying him 3s. 6d. a week it was held that settlement could be gained, *R. v. Pudding Church*, ii. pl. 3.

97. But where the pauper was hired at 3s. a week the year round, each to be at liberty on a fortnight's notice, but the servant not to go away at seed-time, hay-making or harvest; it was held a hiring for a year; for a hiring for a week with a fortnight's notice is repugnant, *R. v. B. broke*, ii. pl. 1.

98. So a hiring at 3s. 9d. a week, with liberty of parting on a month's notice, is a yearly hiring, *R. v. Hampreston*, ii. pl. 1.

99. So also if *A. club* with *B.* for three years (which signifies one person contracting to serve another for the purpose of being taught some art or trade), and also agree to do any work that *B.* sets him about, it is a good particular hiring for a year, *R. v. Colchester*, ii. pl. 322.
100. *A. clubbed* with *B.* for three years at a certain rate of weekly wages, with a proviso that if he were prevented from working by bad weather or want of employment, or illness, there should be a proportionable deduction of wages; it was held that *A.* gained a settlement by serving a year under the hiring, though occasional deductions on these accounts were made, *R. v. Martham*, ii. pl. 323.
101. But where the pauper was hired to work in the silk mills at *Macclesfield* for the term of three years, at 6*d.* a week for the first year, 9*d.* a week for the second year, and 1*s.* 1*d.* a week for the third year, the master not to find the pauper either in diet or lodging, and the service to be only eleven hours in the six working days, and all the rest of the time, as well as on *Sundays*, the pauper to be at liberty and his own master; the court held that this was merely a contract from week to week, and not a hiring for a year, *R. v. Macclesfield*, ii. pl. 308.
102. So also where a man hired himself to a clothier for five years to learn the business of a shearmen, and was to have for the first half year the weekly wages of 4*s.*, and to be advanced 6*d.* weekly wages every succeeding half year, to find himself in meat, drink, washing, and lodging; to work *shearman's hours*, but to be at his own liberty at all other times; the court held that this was not a hiring for a year, for there is an exception in it that the pauper was to work *shearman's hours* only, and be at liberty at all other times, *R. v. Auckland Denham*, ii. pl. 311.
103. A hiring at weekly wages, either party at liberty to part at a month's notice, is not to be a yearly hiring; although the case stated that the pauper let himself by the week, it being also stated that at the time the pauper let himself by the week, nothing passed between him and his master as to his being hired by the week, except that he was to have weekly wages, *R. v. Great Yarmouth*, ii. pl. 303.
104. A pauper in consideration of weekly wages, agreed to serve *J. E.*, a bricklayer, for three years; but, in case he should neglect his master's business, or lose any time on his own account in any one week during the first year, then that *J. E.* should deduct from his weekly wages in proportion; and *J. S.* agreed that he would pay wages in proportion to any overwork which the pauper might do in any one week. There were similar stipulations for the second and third years of the term; and it was also agreed, that in case they could not work through severity of weather in any one year, in the winter time, then that *J. S.* should pay no wages during that time, but should permit the pauper to employ himself in any other business whatever. Held, that these were express exceptions in the contract; and that the pauper, by serving a year under it, did not gain a settlement, *R. v. Edgmond*, ii. pl. 335.
105. A clerk in a mercantile house hired by the year, but serving only during the usual hours of business, thereby gains a settlement, although those hours did not, by the custom of the trade, ever occupy the whole day, and he went where he pleased, without asking his master's leave, when those hours were over, *R. v. All Saints, Worcester*, ii. pl. 304.
106. A hiring for five years as a *coll shearman*, to work only twelve hours in a day, is not a hiring for a year, *R. v. North Nibley*, ii. pl. 321.
107. So also where the pauper covenanted with and served one *Bullock* as an artificer in the art of a glass-grinder for seven years, from six o'clock in the morning till seven in the evening of each day during the said term, including half an hour at breakfast and an hour at dinner times, except on *Sundays*, it was held not a good hiring for a year, for he was not to be under the power and coercion of the master during the whole time, which is essential to constitute a hiring for a year, *R. v. Kingswinford*, ii. pl. 319.
108. So also a hiring from *Michaelmas* to *Michaelmas* at 5*l.* wages, with liberty to let himself out the *harvest month*, is only a hiring for *eleven months*, and not a hiring for a year, although he lodged, not only the 11 months, but the month also for which he let himself out, in the master's house, *R. v. Bishop's Hatfield*, ii. pl. 307.
109. A pauper was hired for a year from *Old Michaelmas*, to go away a month at harvest, and to make up the time after *Michaelmas*. Held that this was not a hiring for a year, *R. v. Turvey*, ii. pl. 334.
110. A hiring at 8*s.* per week, and 2*l.* 2*s.* for the harvest, to do any thing the gardener should set him about, is not a yearly hiring, *R. v. Lambeth*, ii. pl. 332.
111. A servant in husbandry, hired to serve

- for the weekly wages of 4s., board, washing, and lodging, except in the harvest month, when his wages were to be increased to 10s. 6d. *per week*, and then again to be reduced to 4s., does not gain a settlement, for that is only a weekly hiring, *R. v. Dodderhill*, ii. pl. 331.
112. So also where the pauper was hired from *Harborough fair* to *Harborough fair*, being one year, subject to a liberty of being absent 11 or 12 days in the sheep-shearing season, and to have the benefit of what he got during that time; this is not a hiring for a year, for the absence is an exception out of the contract at the time of making it, *R. v. Empingham*, ii. pl. 313.
113. So also where a pensioner of the East India Company hired himself as a servant for a year with a reservation to himself of two days in each half year when he might go for his pension, it was held that he could not gain a settlement by serving a year under such a contract; for there was an express exception of four days in it, during which the pauper was not to be under the control of his master, *R. v. Over*, ii. pl. 324.
114. Where a female natural child was hired for a year by the wife of its reputed father, and continued doing the household work for three years, but after the first year no wages were paid, nor was there any new contract of hiring; held, that the sessions were warranted in finding that after that time she did not continue on the terms of the original hiring, *R. v. Sow*, ii. pl. 383.
115. A master shoemaker made a proposal to a poor woman to take her son to learn his business: the son was to serve him for four years, to board and lodge with his mother, and to have half what he earned; no indentures were executed, on account of the poverty of the mother. Held, that this was a defective contract of apprenticeship, and not a contract of hiring, and consequently that the pauper did not gain any settlement by serving under it, *R. v. St. Margaret's, King's Lynn*, ii. pl. 359.
- VI.
- Of customary Hirings.*
116. A hiring must be for a year, and therefore a hiring from *May-day* to *Lady-day* and from *Lady-day* to *May-day* will not gain a settlement, *Horsham v. Shipley*, ii. pl. 340.
117. So where the pauper was hired on the 3d of October to serve from that day until the *Michaelmas-day* then next ensuing, it was held not a hiring for a year, although in fact he served so long after *Michael-day* as brought the year about, *Pepperharrow v. Frencham*, ii. pl. 341.
118. So also where a statute had been immemorially held for the hiring of servants on the first Thursday AFTER *Martinmas*, and the pauper was hired at such statute to serve till the *Martinmas* then next ensuing; it was held not to be a hiring for a year, *R. v. Newton*, ii. pl. 342.
119. So a hiring from *Martinmas* to *Whitsuntide*, and from *Whitsuntide* to *Martinmas* successively, is not a sufficient hiring to gain a settlement, although it is the custom of the place to consider it as a hiring for a year, *R. v. Louther*, ii. pl. 344.
120. So also where there was a custom for servants to hire by the year at two different statutes, the one held on the Friday before *Old Martinmas-day*, and the other on the Friday next after *Old Martinmas-day*, and the pauper was hired on the Friday next after *Old Martinmas-day* to serve to the *Old Martinmas-day* following, and which, by the custom of the country, was considered as a hiring for a year; yet this is not such a hiring for a year as will gain a settlement; for the act of parliament which requires the hiring to be for a year cannot be controlled by the custom of the country, *R. v. Harwood*, ii. pl. 347.
- Same point, *South Cerny v. Coulsburn*, ii. pl. 355.
121. So also where the pauper, on Saturday 15th October 1787, being three days after *Old Michaelmas-day*, which happened on a Wednesday, was hired to serve until the next *Michaelmas*, and he continued in the service until Saturday 11th October 1788, being the day after *Old Michaelmas-day*, which (it being leap year) happened on a Friday; the court were clearly of opinion, that this was no hiring for a year, although by counting the number of days they make 365; for the contract was to serve from three days after *Michaelmas* until the *Michaelmas* following, *R. v. Achley*, ii. pl. 349.
122. But a hiring from *Whitsuntide* to *Whitsuntide*, such hiring being intended for a year, and so considered by the custom of the country, is a good hiring for a year, although it falls short of 365 days, *R. v. Newstead*, ii. pl. 343.
- But the authority of this case has been doubted, see *R. v. Bow*, ii. pl. 355.
123. So also a hiring at a statute fair held the day after *Old Michaelmas-day* to serve

till the *Old Michaelmas-day* following, is a good customary hiring for a year, for the days shall be taken inclusively, *R. v. Nave-deck*, ii. pl. 345.

134. So a hiring from *Whitsuntide* to *Whitsuntide*, although in that particular year there happen to be less than 365 days, is a good hiring for a year, *R. v. Uverstone*, ii. pl. 350.

135. So where a master on *Old Michaelmas-day* asked the pauper if he would live with him, but on the pauper asking more wages than the master chose to give, they parted without coming to any agreement; on the next day, however, the pauper agreed to take less wages, and hired himself to the master until the *Michaelmas* following, and entered on the service in the evening of that day, being 11th *October*, and quitted the service on the 10th *October* following, but stayed at the request of his master until the 11th *October* at noon, in order to help him to get in his harvest; the court held this a hiring for a year, *R. v. Spaldstone cum Berner*, ii. pl. 346.

136. So also where the pauper, on the next day after *Old Martinmas-day*, which was 24th *November*, hired himself for a year from thenceforth until the *Old Martinmas-day* following, and entered on his service a few days afterwards, and quitted it about 12 o'clock at noon on the *Old Martinmas-day* following; the court held this a good hiring for a year, for the word "till" includes the day, *R. v. Skiplam*, ii. pl. 348.

137. But where a servant was hired three days after *Michaelmas* to serve till the *Michaelmas* following; this is not a hiring for a year, although the master tell him at the time of hiring that he shall not belong to the parish, and the sessions find that all such transactions on the part of masters are fraudulent, *R. v. Mursley*, ii. pl. 357.

138. But if a servant be hired three days after *Michaelmas* to serve till the *Michaelmas* following, and there is an agreement that the servant shall give in three days after the expiration of that time, this could be construed a hiring for a year, *R. v. Mursley*, ii. pl. 357. text.

139. A pauper hired himself without specifying any time, entered into the service the day before *New Year's day*, and quitted two days after *Christmas*, receiving his full wages, that being the usual time that servants in that part of the country go into and leave their places; the court thought that this was a contract which had arrived at its termination before the expiration of a year; but the sessions having expressly found it to be a hiring and service for a

year, the court considered themselves as bound by that finding, *R. v. Tyrley*, ii. pl. 352.

VII.

Of retrospective Hirings.

130. A retrospective hiring, as where *Michaelmas-day* was on a *Thursday*, and upon the *Saturday* following a man was hired "from the said *Thursday* after *Michaelmas-day* to the *Michaelmas-day* following," is not a sufficient hiring to gain a settlement, *Coombe v. Westwoodkey*, ii. pl. 355.

131. If a person be hired from six weeks after *Michaelmas* to serve until the *Michaelmas* following, and before the time expires he offers to live with his master for a year from that *Michaelmas-day*, but this offer not being accepted, he goes away on *Michaelmas-day*, and three days afterwards the master assents, and the servant enters immediately on the service and serves out the year, yet he gains no settlement, for it is a retrospective hiring, *R. v. Westwell*, ii. pl. 354.

132. So also if there be a custom to hire for a year on a day after *Michaelmas*, and a servant be hired on that day to serve from the preceding *Michaelmas-day* until the *Michaelmas-day* then next following, this is a retrospective hiring, notwithstanding the custom of the country, *South Cerney v. Coultshourne*, ii. pl. 355.

133. For there must be by some means or other a hiring for a year and a service for a year to give a servant a settlement; but if the retrospection be fraudulent, as if a master were to hire a servant three days after *Michaelmas* to serve till the *Michaelmas* following, with a private agreement for the servant to give in three days after that time, that would be construed a hiring for a year, *R. v. Mursley*, ii. pl. 357.

134. But if a servant go into a place upon liking, and after he has lived eight weeks in the place his master hires him for a year, to commence from the beginning of the said eight weeks; this is a retrospective hiring, *R. v. Ilam*, ii. pl. 356.

135. So where the pauper, five days after *Michaelmas-day*, went into a place and stayed a month upon liking without any terms being talked of, at the expiration of which time her aunt came and let her for a whole year, to commence from the day she first went into the service; it was held, that the girl gained no settlement by serving the year, because it was a retrospective hiring, *R. v. Hodeaden*, ii. pl. 356 n.

136. If a servant after serving a year, part of which was under a *retrospective hiring*, continue in service another year, a hiring may be presumed, *R. v. Hales*, ii. pl. 485.

VIII.

Of conditional Hirings.

137. A conditional hiring, as for a quarter of a year, and, if the master and servant liked one another, to continue for a year, is, if service for a year ensues, a good hiring to gain a settlement, *R. v. Lidney*, ii. pl. 358.
138. So an agreement to go into service a month upon liking, and to have 5*l.* a year wages, or a month's warning to be at any time paid or given on either side, is a good conditional hiring, and a service for a year under it will gain a settlement, *R. v. New Windsor*, ii. pl. 359.
139. So a hiring for one year at 4*l.* wages, payable quarterly, under an agreement made at the time of the hiring, that either the master or servant should be loose from or at liberty to determine the said contract or hiring at the end of any quarter of the said year, either of them giving a month's notice to the other, is, if no such notice be given, a good hiring for a year; and service for a year under it will gain a settlement, *R. v. Atherton*, ii. pl. 360.
140. So where a servant out of place went to a master, and asked him what he would give; the master replied he would not give him more than he gave his former boy, which was 20*s.* a year; and accordingly the master hired him in this manner: he was to go into the place for a quarter, and to have after the rate of 20*s.* a year, and if he and his master liked each other, he was to continue on, and he continued a year and a half over and above the said quarter, without any further or other hiring; and it was held a good conditional hiring, *R. v. St. Ebb's*, ii. pl. 361.
141. A pauper was by indenture hired for a year as a driver in a colliery, at the wages of 1*s.* 10*d.* for a good day's work, not exceeding 14 hours, and 2*d.* a day more when that time was exceeded; and he was to forfeit 10*s.* 6*d.* for every act of disobedience, and 2*s.* 6*d.* per day for lying idle, (to be deducted out of his wages). There was a proviso, that nothing in the indenture should be construed to oust the jurisdiction of the justices, or to prevent either master or servant from applying to them in cases of disputes; and a covenant

that in case the master, about *Christmas*, should wish to repair any engine, &c. belonging to the colliery, he might stop the workings for any period not exceeding seven days, without paying any wages to the pauper unless employed in other work: held, that this was a conditional and not an exceptive contract, and that the pauper gained a settlement by serving under it for a whole year, *R. v. Byker*, ii. pl. 362.

IX.

Of several Hirings.

142. If a person be hired from 25th *March* to the *Michaelmas* following, and after having served, be, immediately upon the expiration of that time, hired again for a year, these several hirings may be connected, so that service for a year from the commencement of the first hiring will gain a settlement, *R. v. Overton*, ii. pl. 363.
- Same point, *Brightwell v. Westhally*, ii. pl. 366.
143. So a service under a hiring from *Christmas* to *Michaelmas* may be joined to a service from *Michaelmas* to *Christmas*, under a successive hiring for a year, *R. v. Aynhoe*, ii. pl. 368.
144. A hiring from *Lady-day* to the *Christmas* following, and a service under it, and then a hiring for a year, and a service under it to the end of *May*, will gain a settlement, *Hanmer v. Ellesmere*, ii. pl. 369.
145. The service under a hiring from *Christmas* till *Whitsuntide* may be coupled with a service till the beginning of *March* following, under a hiring from the *Whitsuntide* for a year, *R. v. Underbarrow*, ii. pl. 373.
146. A servant hired himself from *Midsummer* to the *Lady-day* following at 40*s.* for that three quarters of a year, and at the *Lady-day* he received his wages, and left his master's service, and went to his father's house, without having any discourse with his master about continuing in the service; after he had been with his father about one hour, his father advised him to go to his master, and see if he could not agree with him for a year, which he immediately did, and lived half a year under this hiring; and it was held that he gained a settlement under these two hirings, *R. v. Fifehead Magdalen*, ii. pl. 371.
147. So where the pauper was hired on the 6th of *December* to serve till the *Michaelmas* following, and went into the service

- on the 7th of *December*, and continued till nine o'clock in the morning on the *Michaelmas-day*; at which time he received his wages, took his clothes, and left his master's house and service; but about half an hour afterwards the master applied to him to stay; and on the same day at one o'clock he hired himself to the same master, to serve him till the *Michaelmas* following, and under this second hiring he served three months; and it was held that he gained a settlement, *R. v. Ellisfield*, ii. pl. 575.
148. So also increase of wages upon a second hiring for less than a year on the day the first hiring for a year ended, and a removal into another parish, are not such a discontinuance of the first service as will defeat a settlement under the several hirings, *R. v. Underbarrow*, ii. pl. 573.
149. So also service under a hiring for a year will connect with similar preceding services under any number of hirings from week to week, *R. v. Bagworth*, ii. pl. 570.
150. Thus where the pauper hired himself by the week, nothing being said about *Sunday* in the contract, but the pauper worked on that day occasionally when asked by his master without receiving any additional wages, but only sometimes victuals, received his wages every *Saturday* night, and lodged and boarded himself, and at the end of nine months was hired for a year, under which hiring he served 11 months; it was held that these several hirings might be joined so as to confer a settlement, *R. v. Sutton*, ii. pl. 584.
151. Service under a hiring from *Michaelmas* to *Michaelmas*, and under a hiring again to the same master three days after *Michaelmas* till the *Michaelmas* ensuing, though at different wages, and for a different kind of service, will connect so as to give a settlement, *R. v. Grendon Underwood*, ii. pl. 380.
152. If a servant be hired, and serve from *November* to *Michaelmas*, and before *Michaelmas-day* his master offer to hire him from *Michaelmas* for a year, at certain wages, to which he does not agree, but remains in the house till the second day after *Michaelmas*, working as usual, and then accepts the offer, and serves part of the year; the services under the latter hiring commence on *Michaelmas-day*, and may be coupled with the former service so as to gain a settlement, *R. v. Sulgrave*, ii. pl. 381.
153. But there must be a hiring for a year by one entire contract; and therefore a year's service under two distinct hirings for half a year each is not sufficient, *Dunford v. Ridgwick*, ii. pl. 364.
154. So if a servant be hired for a year, but runs away, enters into another service, quits it, goes to sea, and then returns to his first master and serves, so as to make up a year without making a new contract, the two services cannot be joined, *R. v. Ross*, ii. pl. 374.
155. But the service under a hiring from five days after *Michaelmas* to the *Michaelmas* following, and a complete and absolute departure from the service on *Michaelmas-day*, cannot be coupled with a service, under a new hiring for a year, made by the same master the day after the servant's departure, *Wickford v. Bretford*, ii. pl. 365.
156. A service for 11 months under a hiring for a year cannot be joined to a service of six months under a second hiring for a year, if the first service be clearly discontinued, although the second hiring took place before the first hiring expired, *R. v. Caverswall*, ii. pl. 372.
157. Nor can distinct and several hirings for 11 months, with a week's absence between each, be connected so as to form a hiring for a year, *R. v. Haughton*, ii. pl. 367.
158. A service under a hiring for 51 weeks may be coupled with a service under a previous hiring for a year, so as to confer a settlement, *R. v. Fillongley*, ii. pl. 386.
159. The service under an imperfect hiring cannot be connected with the service under a perfect hiring, unless under such perfect hiring there is a residence of 40 days, *Eardisland v. Leominster*, ii. pl. 370.
160. Services in successive years will connect only when the servant, at the commencement of the succeeding year, is unmarried, *R. v. St. Giles Reading*, ii. pl. 376.
161. And therefore if *A.* be hired at *Martinmas* to serve in husbandry for a year at 8*l.* a year, and in the middle of the year he marries, and then agrees to serve his master as a hind for a year from that time at 5*s.* a week, and to live out of the house at another farm belonging to his master, a service under these several hirings does not gain a settlement, *R. v. Great Chilton*, ii. pl. 383.
162. If a servant be hired for a year, but prevented by sickness from going into the service until a month after the day he is hired; and, on his going into the service, the master refuse to take him, but make a new agreement for a year, under which

- he only serves 11 months, these two hirings cannot be connected so as to gain a settlement, *R. v. Winterset*, ii. pl. 379.
163. And a settlement may be gained by serving a year under different hirings, if one of them be for a year, though there are not 40 days' service under the yearly hiring, *R. v. Adson*, ii. pl. 382.
164. A pauper, before the expiration of her apprenticeship, hired herself and served for one year, the last four months of which were after her indentures had expired, and then hired herself to the same person for another year, but served only 10 months: Held, that the first service (although without the consent or knowledge of the master) might be coupled with the service under the last contract, and that the pauper thereby gained a settlement, *R. v. Dawlish*, ii. pl. 385.
165. The father of a pauper aged 14 years, agreed by parole to give a shoemaker 1*l.* 1*s.* for teaching his trade to the pauper for 12 months under that agreement. At the end of that period the father agreed that the pauper should work for the shoemaker for 12 months, making shoes at 3*d.* per pair the first six months, and 4*d.* per pair the last six months; under this latter agreement the pauper served six months only: held, that this latter service could not be connected with the service of the former year so as to give a settlement, inasmuch as the first agreement created the relation of teacher and scholar, and not that of master and servant, and the whole year's service, required to confer a settlement, must be under a contract or contracts creating the relation of master and servant, *R. v. St. Mary Kidwelly*, ii. pl. 387.
- X.
- Of Service in different Places.*
166. If, under a hiring for a year, the servant serves half a year in one parish, and then removes with his master and serves the other half year in another parish, he gains a settlement where the last 40 days are served, *R. v. Ashton*, ii. pl. 388.
167. So if a servant be hired as a warrener, to a warren which is in the joint occupation of two persons living in different parishes, and the servant serves sometimes in the warren, sometimes in the parish where the one master lives, and sometimes in that where the other master lives, he shall be settled in the parish where he lodges the last 40 days, *R. v. Eldersley*, ii. pl. 389.
168. If a house stands two-thirds in the parish of *A.*, and one-third in the parish of *B.*, the servant shall be settled in the parish in which that part of the house stands in which she lodges, *Feverham v. Gravenny*, ii. pl. 390.
169. A servant, hired for a year by a lodger in one parish, who goes with her mistress into another parish, merely on a visit, gains a settlement by serving the last 40 days in such parish, *R. v. St. Peter's Oxford*, ii. pl. 391.
- S. P. Bishop's Hatfield v. St. Peter's*,
ii. pl. 391.
170. But see LORD MANSFIELD's observation on these two cases in *R. v. Alton*, ii. pl. 400, *text*.
171. A service performed under a hiring for a year in a different parish from that where the master dwells, gains a settlement in that parish, *St. Peter's in Oxford v. Clipping Wycomb*, ii. pl. 392.
172. Thus if a servant be hired to work at a glass-house in a different parish from that in which the master lives, and resides in that parish, he gains a settlement by residency in the parish where the glass-house is situated, *R. v. Whitechapel*, ii. pl. 393.
173. So where a servant was hired for five years, which he served accordingly in the parish of *A.*, but lodged the whole time in the parish of *B.*; the court held he was settled in the parish of *B.*, because of his inhabitancy there, *R. v. Spitalfields*, ii. pl. 394.
174. The hired servant of a *waterman*, who serves a year by navigating a boat from *Goring to London*, will not gain a settlement by an alternate residence on board the boat and at his master's house, unless he has, during the year, lived at different times forty days in the parish, *Goring v. Molesworth*, ii. pl. 394.
175. For the 40 days' residence of a servant need not be 40 days together; it is sufficient if he reside 40 days at different times during the year, *Greenwich v. Longdon*, ii. pl. 394.
176. The 40 days' residence necessary to confer a settlement by hiring and service must be within the compass of a year, *I v. Denham*, ii. pl. 41.
177. The 40 days' residence necessary to confer a settlement by hiring and service must be within the compass of a year, but need not be under the same year's hiring, *R. v. Findon*, ii. pl. 41.
178. The residence of an apprentice with his grandmother in a different parish from his master on account of illness, though

- with the consent of the master, is not referable to the apprenticeship, so as to gain him a settlement in such parish, *R. v. Barnby-in-the-Moors*, ii. pl. 530.
179. A service with the executor of the master for the remainder of the year in a different parish from that in which the hiring for a year was made, is good; for the death of the master does not dissolve the contract; and the servant by such service gains a settlement in the second parish, *R. v. Ledock*, ii. pl. 397.
180. So where a servant was hired and served for a year, and, without coming to any new agreement, continued to live with his master in the parish in which he was hired about a quarter of a year longer, and then the master took a house in a different parish, to which the servant, with the rest of his family, removed, and lived with him for six months under the original hiring; it was held that he gained a settlement in this second parish, *R. v. Crocombe*, ii. pl. 399.
181. But a mere transitory service of more than 40 days in a third parish will not avoid a certificate; and therefore if a servant, under a hiring for a year, *he being a certificated person*, go with his master to *Scarborough*, or other such public place, not for the purpose of settling, but merely to enjoy the season, and with an intention of returning home; and, during their stay there, the year expires, and the servant applies to the master to make a new agreement, and the master tells him it will be time enough when they get home, and on their arriving at home a new hiring takes place; a residence of 40 days in such place does not gain a settlement there, *Allon v. Blottham*, ii. pl. 400.
182. But a servant under a yearly hiring, who serves the last 40 days at *Exmouth*, to which place he had accompanied his master, who had gone there with his family and lived in a hired house, for the purpose of sea-bathing, gains a settlement at *Exmouth*, *R. v. Bath Easton*, ii. pl. 403.
183. So also a groom who is hired for a year, gains a settlement by serving 40 days at *East Ilsey*, where he lives, for the purpose of training his master's horses, although the master has neither house nor land, nor settlement in the parish, *R. v. East Ilsey*, ii. pl. 402.
184. So a sailor boy who hires himself for a year to the boatswain of the hulks which lie at *Chatham*, in the river *Medway*, and serves for a year, sometimes on board one hulk, and sometimes on board another, sleeping and being victualled therein, may gain a settlement in that parish within which the hulk lies, on board of which he so lives and serves, although his master has a residence in a different parish, *R. v. Friendsbury*, ii. pl. 401.
185. If the residence of a servant be alternately in two parishes, but he does not continue successively for 40 days in either, but more than 40 days interruptedly in both, he shall gain a settlement in that parish in which he last lodged, *Lowess v. Lanstephan*, ii. pl. 404.
186. A servant was hired as a gardener for a year; during the year he married; and, from the time of his marriage to the expiration of the year's service, he lodged with his wife in a different parish 40 nights, but not successively, and did not lodge 40 nights elsewhere, from the time of his marriage till the expiration of the year; and held that he gained a settlement in the parish where he lodged with his wife, although it was without the knowledge of the master, *R. v. Hedsor*, ii. pl. 405.
- Same point, *R. v. Nympefield*, ii. pl. 405 n.
187. And if a servant reside part of the year in one parish, and part in another, at different times and intervals, making, when added together, more than 40 days in each, his settlement is in the parish where he slept the last night, *R. v. Hulland*, ii. pl. 406.
188. For if there be an inhabitancy, under a hiring for a year, of 40 days, at any intervals throughout the year, in any number of parishes, wherever the last day's inhabitancy shall happen to be, such will connect with any prior inhabitancy in the course of the year; and if, throughout the year, the whole will amount to 40, in that place the settlement attaches, *R. v. Iveston*, ii. pl. 407.
189. Therefore where a servant was hired in the parish of *Fetcham*, and after 40 days' service married; and, from that time, slept with his wife every night for the remainder of the year in the parish of *Great Bookham*, except the last, when he slept at his master's, in the parish of *Fetcham*; it was held that his settlement was in *Fetcham*, *R. v. Great Bookham*, ii. pl. 407 n.
190. And where the last 40 days are served in a place where no settlement can be gained, the settlement is in the place where the last day of the preceding 40 days are served, *R. v. St. Andrew's Holborn*, ii. pl. 408.
191. And so if a yearly servant serve 40 days in *A.*, then forty days in *B.*, and after-

- wards returns to his father's house in *A.* for the last three days of the year, with the master's consent, he is settled in *A.*, *R. v. Undermilbeck*, ii. pl. 409.
192. In settlement by hiring and service the pauper is settled where his place of rest is, and, therefore, where a servant who drove the mail-cart had a bed provided for him by the year at *N.*, where he rested every night during four or five hours, in the middle of the night, and afterwards returned back again in the morning to his master's house at *M.*, and usually went to bed, in his own exclusive room, for about two hours: Held, that his place of rest was in *M.*, and that his settlement was there also, *R. v. Mildenhall*, ii. pl. 411.
193. Where a pauper served under a yearly contract in the parish of *A.*, and was again hired in the same parish, by the same master, for a less period than a year (there being no interruption of the service), and during the latter period removed with his master into the parish of *B.*, and served him there: Held, that the pauper did not acquire a settlement in that parish, inasmuch as no part of his service there was under a yearly hiring, *R. v. Apethorpe*, ii. pl. 412.

XI.

Of Service with different Masters.

194. A service under a hiring for a year, part performed with the *original master*, and the remainder with a *stranger* to whom he had let his farm, is a good service, if there be no *dissolution* of the original hiring, *R. v. Ivinghoe*, ii. pl. 414.
195. So a service with the executor of the master for the remainder of the year in a different parish from where the hiring for a year was made, is good; for the death of the master does not dissolve the contract, as to settlement, *R. v. Ladock*, ii. pl. 397.
196. A service with another person, with the master's consent, is not a dissolution of the contract, *R. v. Beccles*, ii. pl. 415.
197. But if a yearly servant, three weeks before the end of his year, hire himself to a second master, provided the first would let him go, and the first master, a week afterwards, consent, and pay him his whole wages, it is a dissolution of the contract with the first master, *R. v. Thistleton*, ii. pl. 462.

XII.

Of Marriage during the Service.

198. By 3 W. & M. c. 11. "if any unmarried

person not having child or children is hired into any parish for one year, such service shall be deemed a settlement."

199. This statute only requires that the servant be *single and childless* when hired, *Farrington v. Witty*, ii. pl. 416.
200. And therefore if a servant be in that state when hired for a year, his subsequent marriage does not dissolve the contract between master and servant, nor prevent him from serving out the year in order to gain a settlement, *R. v. Clent*, ii. pl. 417.
- S. P. R. v. Sutton*, ii. pl. 418.
201. Nor intitle either the master to turn such servant away, or a justice of peace to discharge him before the expiration of the year, so as to prevent a settlement, *R. v. Hanbury*, ii. pl. 419.
202. Nor does marriage between the *hiring* and the *commencement of the service*, alter the settlement, *R. v. Allendale*, ii. pl. 421.
203. But if a servant under a general hiring marry during the year, and serve eleven months, and then move into another parish, and continue to serve the same master without coming to any new hiring, these services cannot be united, because he was not forty days in the second parish during the first year, and at the commencement of the second year he was married, and incapable of being hired, *R. v. St. Giles's*, ii. pl. 420.
- See also *R. v. Hedso*, ii. pl. 405.
- And *R. v. Castleton*, ii. pl. 586.

XIII.

Of Absence from Service.

204. The rule which the court of king's bench has laid down as the test whether the circumstances attending the departure of a servant before the end of the year amount to a *dissolution of the contract*, or only to a *dispensation of the service*, is whether the master has the power afterwards of compelling the continuance of the service: if he have not, there is an end of the contract; if he have, and chooses to dispense with it, it is a dispensation, *R. v. Rushall*.
205. An absence, created by the default or contrivance of the master, shall not impede a settlement; as if a servant fall sick or marry during the year, and the master, for either of these causes, turn the servant away, *R. v. Hardingham*, ii. pl. 42.
206. Or if he turn the servant away fraudulently to void a settlement, *Eastland Westhorsley*, ii. pl. 42.

207. So where a servant, seventeen days before the year expires, is removed from her master's house on account of her illness, and the next day receives her whole wages, and does not recover so as to return within the year, yet this is no dissolution of the contract, *R. v. Christchurch*, ii. pl. 436.
208. For a servant who thus lies under the visitation of the hand of God, which befalls him not through his own default, is, and must be taken to be, all the while in the service of his master, *R. v. Islip*, ii. pl. 425.
209. So a servant disabled by accident in the beginning of the year, and never after received into the service, gains a settlement, *R. v. Sharrington*, ii. pl. 449.
210. So where a servant, three days before his year was up, asked leave of his master to go to a statute fair to be hired, which the master refused; but the servant persisting, the master said, "I am resolved that you shall gain no settlement in this parish, and therefore, if you will go, it shall be for good and all."—"No," replied the servant, "I will serve out the year," and thereupon he went and never returned during the last three days;—and the court held that this was not a sufficient absence to prevent the settlement, for the servant's request was reasonable, and the master's refusal unreasonable, and therefore his going away afterwards without leave is no dereliction of his service, *R. v. Islip*, ii. pl. 425.
211. Where a pauper being hired for a year, and having served till within a few days of the end of the year, went, without his master's leave, to the statutes to hire himself for the next year; and on the master's dismissing him for that, went before a magistrate with his master, and there offered to serve his master out, but upon receiving his full year's wages was satisfied, and did not return to his service; but neither hired nor offered to turn himself into any fresh service until the year had expired: held, that this amounted only to a dispensation with his service for the remainder of the year, and that he thereby gained a settlement, *R. v. Polesworth*, ii. pl. 477.
212. So also if a servant, having received a kick from one of his master's horses, leave his service three weeks before the end of the year, without his master's knowledge, and go to his friends in order to get cured, this departure is no dissolution of the contract, or interruption of the service, although the master deduct from the servant's wages for the time he was absent; and therefore the servant will gain a settlement, although he was not able to return until after the year expired, *R. v. Maddington*, ii. pl. 438.
213. For absence on account of sickness is no dissolution of the contract, *R. v. Oxleworth*, ii. pl. 432.
214. And therefore a servant who is deprived of his reason 40 days before the end of the year, and is taken home by his father in another parish, but receives his wages for the whole year, does not by this absence lose his settlement in the master's parish, *R. v. Sutton*, ii. pl. 461.
215. But if a servant be taken ill five days before the end of the year, and go home to his mother, who, by his desire, fetches away his clothes, and receives the year's wages, excepting 1s. for the five days, this is a dissolution of the contract, *R. v. Whittlebury*, ii. pl. 465.
216. So if a servant, on being beaten by her master 16 days before the end of the year, desires him to dismiss her, and receives her whole year's wages, and goes away, she thereby dissolves the contract, *R. v. Upwell*, ii. pl. 465.
217. Where the master died three weeks after hiring the pauper for a year, the latter abiding in the service with the widow and sons to the end of the year, gains a settlement in the parish where she served: and it is no less an abiding in the service for a year because the sons, on a frivolous pretence, turned her out of doors three weeks before the end of the year, she being willing and offering to stay to the end of the year, and carrying away her clothes the next day, and taking what the son insisted was her full wages for the year according to the agreement, though she demanded a larger sum as her full wages. *R. v. Hardhorn with Newton*, ii. pl. 472.
218. Where a servant under a yearly hiring served two months, and was then committed and imprisoned under stat. 20 G. 2. c. 19. for misbehaviour to his master, and after nine days' imprisonment was, upon the application of his master, discharged, and returned to him, and served him as before, and no mention was made of the terms on which he was to serve, and he served in the whole, from the time of the hiring, for about 19 months: held, that the commitment and imprisonment were not a dissolution of the contract, or such an interruption of the service as to prevent a settlement, and therefore he gained a settlement by such hiring and service, although he was married when he returned to his master, and received no

- wages for the time he was in custody, *R. v. Barton-upon-Irwell*, ii. pl. 475.
219. Where a master, who had hired a servant for the year, at the expiration of 11 months made a complaint against him before a justice of the peace, and the latter under the provisions of the 20 G. 2. c. 19. § 2. committed the servant to the house of correction for one calendar month, which did not expire until after the end of the year for which he had been hired: held, that this was an abiding in the master's service for a whole year, within the meaning of the 8 & 9 W. 3. c. 30., and that the servant thereby gained a settlement, *R. v. Hallow*, ii. pl. 478.
221. If the absence be occasioned by the default of the servant, it will prevent the settlement, as if a master turn a female servant away on her being with child, *R. v. Marlborough*, ii. pl. 425.
222. For a master, under such circumstances, does not do wrong in turning the servant out of his house; to keep her in it would be *contra bonos mores*; and in a family where there are young persons, both scandalous and dangerous, *R. v. Brampton*, ii. pl. 444.
223. So if a male servant be turned away by his master before the expiration of the year, on his being charged as the reputed father of a bastard child, he will lose his settlement, *R. v. Welford*, ii. pl. 446.
224. So if a servant be taken into custody for an offence, and, by the detainer, he is prevented from continuing in his service, the master may discharge him before the end of the year; and such discharge is a dissolution of the contract, and impedes his gaining a settlement, *R. v. Westmeon*, ii. pl. 447.
225. So an absence of some days at the end of the year, by reason of a commitment for getting a bastard child, prevents a settlement, although the master was the overseer of the parish, and active in procuring the commitment, and the pauper was let out as soon as the year expired, on giving his own bond to indemnify the parish, *R. v. North Cray*, ii. pl. 450.
226. So where a pauper, to avoid being taken up for a bastard child, told his master that he must be off, and asked the master for money, which he gave him, and then ran away, and after an absence of nine days returned to fetch away his clothes; this was held a dissolution of the contract, although at the time he returned he was asked to stay, and continued in the service to the end of the year, *R. v. East Kennett*, ii. pl. 452.
227. If a servant be hired for a year, but, three weeks before the end of the year, departs from the service, and abates so much out of his wages for the three weeks, this is a dissolution of the contract, although the master does not object to the going away, *Peulet v. Burham*, ii. pl. 424.
228. So where the servant served a year, except one week, which he neglected to serve, on account that he and his master could not agree respecting wages for the ensuing year, and therefore quitted the service *without any compulsion* on the part of the master; the court held, that the words "without any compulsion" were to be understood that he had quitted the service by *mutual consent*, and that therefore the service was interrupted, and no settlement gained, *Sheen v. Godalming*, ii. pl. 427.
229. So where the servant absented himself to be married, and on his return to the service the master refused to keep him, and offered him his wages, deducting for the absent time, which the servant refused to accept, but on the master's threatening to go before a justice, the servant called him back, and said that he would take the money offered, and that he *parted with his own consent*, the court held this a clear unequivocal dissolution of the contract, *R. v. Seagrave*, ii. pl. 448.
230. So where the servant, five or six days before the end of the year, was bribed to quit his service before the expiration of the year, it not being positively found to be fraudulent, the court held it an interruption of the service, *R. v. Preston*, ii. pl. 428.
231. But where the servant served till within ten days of the end of the year, and then, telling his master that he did not wish to be settled in the parish, asked his leave to go and visit his relations, to which the master consented, and, when the year was expired, the servant returned, and hired himself as a day-labourer, the court held that the service was not interrupted, for that the leave and consent of the master was fraudulent, *R. v. Frome Selwood*, ii. pl. 457.
232. So where on the hiring the master said, "You shall go away a fortnight at *Michaelmas* on account of settlement, and I will give you that fortnight to get what you can;" this is dispensing with the service, and not an exception in the contract, and therefore the fortnight's absence will not prevent the servant from gaining a settlement, *R. v. Sulgrave*, ii. pl. 454.

233. A pauper was hired to serve for part of a year. Three days before the expiration of the period of service the mistress asked the pauper to stay again. The pauper replied that she had no objection, if they could agree about wages. They did agree for 3*l.* 10*s.*, and 1*s.* earnest was paid. Nothing was then said as to the time for which the pauper was to serve; but a week afterwards the mistress said to the pauper, "I have hired you, but mentioned no time; remember that you are hired for 51 weeks," to which the pauper assented: Held, that this was a good hiring for a year, *R. v. Market Bosworth*, ii. pl. 479.
234. But where the servant, three days before the end of the year, for the purpose of avoiding a settlement, proposed to his master to go before a justice in order to be discharged by him, which was done accordingly, this is not fraudulent, but a dissolution of the contract, and of course a destruction of the settlement, *R. v. North Beekam*, ii. pl. 451.
235. So where the servant went to live with his master on the 7th of January 1733, and continued with him till the day after Christmas-day following, and then went away by his master's consent, who paid him the whole year's wages, it was held an interruption to the service, *R. v. Castlechurch*, ii. pl. 430.
236. A master consents to his servant's leaving his service two days before the expiration of his year, and pays him his full wages. Held by three judges, clearly a dissolution of the contract; by one judge, that the sessions might have drawn from these facts a conclusion, that the master had dispensed with the service of the servant for the remaining day of the year, *R. v. Maidstone*, ii. pl. 474.
237. If a servant serve his master for six months, and, on being paid his wages, go away for a fortnight, and hire himself to another master, and return again without making any new agreement, this absence is an interruption to the service, although the master receive him again, and he serve over the year for the time he was absent; for there is, in this case, an absolute dissolution of the contract, *R. v. Ross*, ii. pl. 441.
238. So if a master insist on turning away his servant, and throw down his wages, and the servant takes them up, and then goes away, and after the expiration of six days returns, at his master's request, and serves the remainder of the year, the absence is not purged by the subsequent return; for the contract being once dissolved, cannot be set up again by a subsequent agreement, *R. v. Gresham*, ii. pl. 453.
239. So if a servant within three weeks of the end of the year receive his wages, and is discharged with mutual consent, this is a dissolution of the contract, which cannot be restored by his being again received by the master's wife before the year expired, *R. v. Caverswall*, ii. pl. 454.
240. So where a yearly servant three weeks before the end of his year hired himself to a second master, provided the first would let him go, and the first master, a week afterwards, consented and paid him his whole wages, this was held to be a dissolution of the contract with the first master, *R. v. Thistleton*, ii. pl. 462.
241. A servant, who had been hired for a year, being discharged by her master four months before the year expired, went to a magistrate for redress, she being desirous of continuing in the service. The magistrate ordered the master to take her back, or to pay her the whole year's wages (but not some wool which he had also agreed to give her if she behaved well). The master refused to take her back, but paid her the whole year's wages; which money she took, and tendered herself as a servant to others; and it was held that the contract was thereby dissolved, and no settlement gained under it, *R. v. King's Pyon*, ii. pl. 468.
242. A yearly servant, about a fortnight before the end of his year, being too ill to work, was paid by his master his whole year's wages, when he left the service, and went to an hospital, and never returned into his master's service, and this was held a dissolution of the contract, *R. v. Sudbrooke*, ii. pl. 469.
243. The pauper desired her mother to look out for a place for her, and the mistress, on the application of the mother, some time before *Old Michaelmas*, said that she would give the pauper the same wages as her other servants, and wait till she came; but the mother made no absolute agreement for her daughter, though she informed her that she had got a place for her if she liked it: About a week after *Old Michaelmas*, the mistress applied to the pauper to know if she liked to come into her service, and they then agreed, for the first time, for certain yearly wages (the same as the other servants), with liberty of parting at a month's wages or warning: The pauper gave a month's previous notice to quit at *Old Michaelmas*.

day, which the mistress accepted, and procured another servant to come on that day, when the pauper received her whole year's wages; but on her mistress telling her she wanted a week of serving out her year, she offered to stay another week, to which the mistress said, that it did not signify, as she had got another servant in her place; and it was held that the service did not commence until the actual hiring, a week after *Old Michaelmas-day*, and that this was a dissolution of the contract before the end of the year, by the notice to quit given and accepted, and not a mere dispensation of the service; and that, consequently, no settlement was gained by such hiring and service, *R. v. Rushall*, ii. pl. 470.

244. Five days before the end of the year a servant absented himself, by leave, one day from his master's service, to look out for another place, and, on his return, the master, on some trivial pretence, said he should not stay any longer in his service, and offered him a trifle less than his whole wages, which the servant refused; but was then ready to have accepted his whole wages, though he would rather have staid out his year; and immediately applied to a magistrate to oblige his master either to pay him the whole, or to receive him into his service for the remainder of the year, when the magistrate ordered half a crown to be deducted, and the servant thereupon hired himself to another master before his first year was out; and, after his year, received his whole wages: and it was held a dissolution of the contract by mutual consent, *R. v. Leigh*, ii. pl. 471.

245. But where it was the intention of both master and servant that the service should continue to the end of the year, and a few days before the end of the year, the master was obliged, from unforeseen circumstances, to break up housekeeping, and dismiss the servant; but paid her her full wages to the end of the year; this was held to be a dispensation of the service, *R. v. St. Bartholomew Cornhill*, ii. pl. 445.

246. If a hired servant be removed, and neglect to appeal, but returns to his place in a few days, and his master receives him, and he serves out the year, and is paid his full wages, yet the absence is an interruption of the service, and will prevent his gaining a settlement, *R. v. Kenilworth*, ii. pl. 455.

247. So if a servant be turned out of doors by his master three days before the end of the year, and, on his master's request the next day, refuse to return into the ser-

vice, he thereby loses his settlement, *R. v. Grantham*, ii. pl. 458.

248. A servant, hired for a year, served till within a fortnight or three weeks of the end of the year, when, upon a dispute between him and his master, he, in consequence of his master kicking him, would not stay, but went to his father's house, but in the course of the following week, and before the end of the year, he returned with his father to his master's house, and received the whole of his wages, and half a crown over for himself, when his master asked him to stay, but he refused, and went back to his father's house, and it was held that this absence from service prevented his settlement, *R. v. Corham*, ii. pl. 467.

249. So where the servant, a few days before the end of the year, went away in order to seek for another place, without asking his master's consent, and on his return before the end of the year, the master insisted on turning him away, and offered him his wages up to that time, which he accepted without any objection, though he wished to have stayed the year; this absence is a dissolution of the contract, although the servant wished to stay out the year, *R. v. Clayhydon*, ii. pl. 459.

See also *R. v. Thistleton*, ii. pl. 469.

See also *R. v. Peter Mancroft*,

ii. pl. 466.

250. But the absence of the servant, whether in the beginning, in the middle, or at the end of the year, may be cured, by the master's receiving him again into the service before the year expires, provided the contract be not dissolved, *R. v. Eaton*,

ii. pl. 463.

251. Therefore where a servant went without the leave of his master to see his mother, and stayed away four days, but the master received him again, this absence did not prevent his gaining a settlement, *R. v. Iship*, ii. pl. 461.

252. So a service, though not commenced till three days after the hiring, and interrupted by the absence of a fortnight, without the master's consent, is a sufficient service, if the master confirm it by permitting a continuation of the service on the servant's return, *R. v. Hanbury*,

ii. pl. 43.

253. So where after a service of eight weeks the servant ran away, and was absent for thirteen weeks, during which time he worked with and received wages from another person, and at the expiration of which time his master apprehended him with a warrant, but in his way to a justice

- asked him whether he would come back to his place or go to prison; and told him that if he would go back to his place, and go on as he ought to do, he might, and it was agreed that the servant should abate a shilling a week from his wages for the time he had been absent, the court held the absence was dispensed with, *R. v. Inhabitants of East Shefford*, ii. pl. 460.
254. If the master permit the absence, or dispense with the service, it will not prevent a settlement; therefore if a servant be hired for a year, and three weeks before the end of the year, goes, with his master's permission, to the herring fishery, and provides another person to serve in his place during his absence, this is no dissolution of the contract, although he do not return until three weeks after the year is expired, *R. v. Goodnestone*, ii. pl. 431.
255. But if a servant before the end of his year applied for his discharge, which the master refused, unless the servant could get another man in his place; the servant accordingly procured another, upon certain wages agreed upon between them, and then left the service, and hired himself as a day-labourer for the remainder of the year: these facts are sufficient evidence of a dissolution of the contract, *R. v. Mildenhall*, ii. pl. 475.
256. Where the master of a servant under a yearly hiring, 28 days before the end of the year, gave up his business, sold his stock, and paid off and discharged the servant, with all his other servants, paying them their full wages, and telling them to go where they liked, and the servant took his wages, left the house, and worked with another person, with the master's knowledge, during the 28 days. Held, that this was a dissolution of the contract; and it appearing upon the case stated by the sessions that they had proceeded on the ground of its being a dispensation, though the sessions did not find that as a fact, this court quashed the order of sessions, *R. v. Bray*, ii. pl. 476.
257. If a servant, five weeks before the end of the year, go, with his mistress's leave, to work in a different parish, and, on receiving his year's wages after the year expires, he voluntarily returns the amount of the money he had earned during the absence, this is an *absence with leave*, and therefore no dissolution of the contract, *R. v. Nether Heyford*, ii. pl. 435.
258. An absence from service on holidays and *Sundays*, if that be the custom of the trade in which a servant is hired for a year, will not prevent a settlement, *R. v. St. Agnes*, ii. pl. 439.
259. On a hiring from *Michaelmas* to *Michaelmas*, if the servant say that he cannot come until the day after *Michaelmas-day*, and the master reply he will *shift for himself*, this is a permission of absence, and if the servant continue in his service till the day before the ensuing *Michaelmas-day*, and then quits by leave from his master, it is a good service for the year, *R. v. Bray*, ii. pl. 440.
260. But where the pauper being 50 years of age, and a native of *Wiltshire*, and her mother and other relations living near *Rushall*, some time before *Old Michaelmas-day*, the time at which the service in which she was then living at *Wiston* was to end, wrote to her mother, desiring her to look out for a place for her, which she did; and, in consequence, treated with *Mrs. Peck*, who told her she would give her daughter ten guineas a year, and *wait till she came down*, desiring that she might come as quickly as she could; but the mother made no absolute agreement for her daughter, but afterwards informed her that she had got a place for her if she liked it; and the pauper left her service at *Wiston* on *Old Michaelmas-day*, and went to her mother on 16th *October*, and on the 18th went to *Mrs. Peck's*, and agreed with her for the ten guineas a year, with liberty of parting at a month's wages or a month's warning; this was held to be a hiring from 18th *October*, and not from *Old Michaelmas-day*, *R. v. Rushall*, ii. pl. 470.
261. And the sessions must state as a fact whether the master dispensed with the service before the end of the year, or whether there was a dissolution of the contract by mutual consent, *R. v. St. Peter Mancroft*, ii. pl. 466.
262. A servant, the day before the year expires, desires his master to discharge him, that he may have a day with his friends before he goes to another master, to whom he had hired himself; and to this the master consents, and the servant is discharged; this is an *absence with leave*, and no dissolution of the contract, *R. v. Potter Heigham*, ii. pl. 442.
263. A footman, two months before his year expires, marries a maid-servant in the family, who had given warning to quit, but who was desired by her master to stay till a future day, which day was anterior to the expiration of her husband's year; on which day she and her husband also, on the master's proposal, went away, which was thirteen days before the husband's

- year expired, but the master paid him his full wages; and this was held an absence with leave, *R. v. Richmond*, ii. pl. 443.
264. If a servant hired for a year give warning eight days before the expiration of the year to leave his master at the end of the year, and the master discharge him on the same day, paying him his full wages, the servant being willing to stay till the end of the year, the contract is not thereby dissolved, so as to prevent the servant's settlement; for it is merely dispensing with the remainder of the service, *R. v. St. Phillip in Birmingham*, ii. pl. 456.
265. If a servant hired at yearly wages, be discharged four or five days before the end of the year, upon the master's becoming bankrupt, and receive the full year's wages, this is a sufficient service to gain him a settlement, *R. v. St. Andrew Holborn*, ii. pl. 457.
266. So where a master being obliged to leave his house seven days before the end of a year, for which he had hired a servant, told the latter that he had no further occasion for her services, and paid her the whole year's wages, she being willing to have staid if it had been convenient to have kept her, it was held a sufficient service to gain her a settlement, *R. v. St. Mary Lambeth*, ii. pl. 465.
267. By 37 G. 3. c. 3. § 22. the absence of a militia-man, except when the militia is embodied, or the absence is above twenty days, shall not vacate the contract, but the master may deduct for the time out of his wages.

XIV.

Evidence of Hiring and Service.

268. The declaration of the pauper's father made to his wife, respecting his having been hired for a year, and serving it in a particular parish, is admissible evidence in an inquiry into the settlement of the son, *R. v. Nutley*, ii. pl. 480.
269. Evidence of a pauper's having lived in the capacity of an ostler, and of his having said that he was settled in the parish, will support the inference that he was hired for a year, *R. v. Holy Trinity*, ii. pl. 481.
270. If the settlement depend upon a written instrument, it must first be shown that inquiry has been made after it, *R. v. St. Sepulchre*, ii. pl. 482.
271. An *ex parte* examination, in writing, of a pauper, taken by two magistrates, for the purpose of removing him, is not admissible evidence at the sessions on appeal, although the pauper cannot be found, *R. v. Nuneham Courtney*, ii. pl. 486.

272. Nor is the hearsay of a pauper, though dead, evidence of his settlement, *R. v. Ferry Frystone*, ii. pl. 487.
273. Nor is the examination on which he was removed evidence of his settlement after his death, *R. v. Abergwilly*, ii. pl. 488.
274. If a husbandman serve for a year, it is a strong presumptive evidence that he served under a yearly hiring, *R. v. Lyth*, ii. pl. 488.
275. So if a servant serve three years with the same master, although he was only at first hired for part of a year, *R. v. Long Wharton*, ii. pl. 484.
276. If a servant, after serving a year, part of which was under a retrospective hiring continue in service another year, a contract of hiring may be presumed, *R. v. Hales*, ii. pl. 485.

SETTLEMENT BY APPRENTICESHIP

- I. *The Statutes.*
- II. *The Binding.*
- III. *The Inhabitation.*
- IV. *Discharging Indentures.*
- V. *Service to different Masters.*
- VI. *Certificates.*
- VII. *Of Evidence.*

I.

Of the Statutes.

1. By 3 W. & M. c. 11. § 8. "if any person shall be bound an apprentice by indenture and inhabit in any town or parish, ~~and~~ *binding and inhabitation* shall be adjudged a good settlement, though no notice delivered and published."
2. By 31 G. 2. c. 11. "no person bound as prentice by any deed, writing, or contract not *indentured*, being first legally ~~stamped~~ shall be removed from the parish in which he is bound apprentice, and has resided forty days, on account of such deed, ~~writ~~ *ing*, or contract not being *indentured* only."

II.

Of the Binding.

3. If a person be bound an apprentice though to a master who is incapable of entering into such a contract, yet the competency of the master shall not prevent the apprentice from gaining a settlement, *Anonymous*, ii. pl. 48.
4. Therefore where the parish-officers to the father of a poor boy that they would give him twenty shillings to bind his apprentice, and the father according bound him to an infant of fourteen years

- of age, who was then resident in his mother's house as a part of her family, and had no business of his own, it was held that the poor boy gained a settlement by this binding, *R. v. St. Petros*, ii. pl. 504.
5. So also if an infant bind himself apprentice, he will gain a settlement under the indentures; for they are not void, and an infant may make an indenture for his own benefit, *Newbury v. St. Mary's*, ii. pl. 490.
6. An apprentice may now gain a settlement under the binding and inhabitation, although the binding is not by indenture, *R. v. Mellingham*, ii. pl. 492.
7. An infant may bind himself apprentice by indenture, because it is for his benefit, and though he be a pauper in the parish workhouse at the time of the binding, and the parish officers pay the premium, yet it is not necessary that they should sign the indenture, nor that the justice should assent thereto, if the pauper be not a parish apprentice within the meaning of the stat. 45 Eliz. c. 2., *Rex v. Arundel*, ii. pl. 516.
8. But no settlement can be gained by binding and inhabitation unless the deed be legally stamped, *Salford v. Storeford*, ii. pl. 491.
9. But an apprentice bound out by a public charity gains a settlement, though the indenture is not stamped, *R. v. St. Matthew Bethnal Green*, ii. pl. 498.
10. The binding must be by deed, for there cannot be an apprenticeship by parol, *R. v. Mawman*, i. pl. 634.
11. And therefore if A. serve seven years as an apprentice, and there be no indentures, he cannot gain a settlement either as an apprentice or a yearly servant, *R. v. Margram*, ii. pl. 506.
12. A settlement by apprenticeship must depend upon the legality of the binding; if the binding be defective, servitude under it will not enure as a hiring and service, *Salford v. Storeford*, ii. pl. 491.
13. And therefore where it was agreed between the pauper and a stone-mason, that the mason should take him apprentice for six years, and provide him with meat, drink, washing, lodging, and clothing; that the pauper should work for him as an apprentice during the time; and that indentures should be executed between them accordingly; but no such indentures were ever executed; the court held that he could not gain any settlement by serving the six years, for he was neither bound as an apprentice, nor hired as a servant, *R. v. Whitchurch Canoniscom*, ii. pl. 497.
- Same point, *Peter Church v. All Saints*, ii. pl. 499.
- Same point, *R. v. Highnam*, ii. pl. 501.
- Same point, *R. v. Ditchingham*, ii. pl. 505.
- Same point, *R. v. Margram*, ii. pl. 506.
14. So where the master and father of a boy agreed, under seal, that the master should teach the son the art and mystery of weaving for five years, and find utensils, and the son should receive half his earning, and the master the other half, under which the boy served out the time as an apprentice; it was held that this agreement between the father and the master (to which the son was no party) not binding the son, or the father for him, to any service to the master; but the son's service, in fact, being merely voluntary, was no apprenticeship in point of law; and, consequently, that no settlement could be gained by the son serving his master under such a contract, *R. v. Cromford*, 8 East, 25.
15. But a contract of apprenticeship may be formed without using the term "apprentice;" for whether a contract be a contract of apprenticeship, or of hiring and service, must depend on the intention of the parties, to be collected from the whole of the agreement, *R. v. Laindon*, i. pl. 507.
16. And therefore a contract under seal, and stamped, to serve another for three years at so much a week, the master agreeing to learn the other a trade, and the latter agreeing, if he lost any time to the prejudice of his master, to abate so much a day, constitutes an apprenticeship:—at any rate, the pauper having served under it for more than a year, gains a settlement either as an apprentice or as a hired servant, *R. v. Rainham*, ii. pl. 509.
17. But if there be a legal binding as an apprentice, the party by inhabitation under it shall gain a settlement, although it is for a less term than seven years, unless the indentures have been vacated on this account by the parties themselves, *St. Nicholas v. St. Peter's*, ii. pl. 492.
18. So, although the binding be defective in omitting part of the form required by the 45 Eliz. c. 2. § 5. *R. v. St. Petros*, ii. pl. 496.
19. So a binding and inhabitation will gain a settlement, although the apprentice fee be not inserted in the indentures pursuant to the 8 Ann. c. 9. § 59.; for that only subjects the master to a forfeiture, but does not make the indenture void, *R. v. Northowram*, ii. pl. 494.
20. So a settlement may be gained where the apprentice is bound, though the indenture is not executed by the master, *R. v. St. Peter's-on-the-Hill*, ii. pl. 495.
21. Therefore where an infant was bound

- apprentice by the parish, and the original indenture and its counterpart allowed by two justices, and signed by the overseer, but neither the original indenture nor the counterpart were executed by the master, but he received the infant into his service as his apprentice, and the apprentice continued with him the whole term, it was held that he thereby gained a settlement, *R. v. Fleet*, ii. pl. 500.
22. So a parish apprentice bound to a master residing in a different parish and county, will gain a settlement by inhabiting 40 days under the indenture, although he the apprentice did not sign the deed, *R. v. St. Nicholas Nottingham*, ii. pl. 502.
23. An indenture binding an adult as an apprentice, but not executed by such adult, does not constitute the relation of master and apprentice; and no settlement can be gained under it, *R. v. Ripon*, ii. pl. 511.
24. When the master and father of a boy agreed under seal that the master should teach the son the art and mystery of weaving for five years, and find utensils, and the son should receive half his earning and the master the other half; under which the boy served out the time as an apprentice; held, that this agreement between the father and master (to which the son was no party) was not binding on the son, or the father for him, to any service to the master; but the son's service in fact being merely voluntary, was no apprenticeship in point of law, and consequently no settlement could be gained by the son serving his master under such a contract, *R. v. Crauford*, ii. pl. 510.
25. A parish apprentice cannot gain a settlement under indentures to which the two justices have assented separately; for they are, for this defect, absolutely void, *R. v. Hornstall Ridware*, ii. pl. 503.
26. But their assent thereto is sufficiently signified by one of them first signing it alone, and being afterwards present when the other signs it, *R. v. Winwick*, ii. pl. 508.
27. After a pauper under age had hired himself generally for a year to a brickmaker, and served part of the time, they entered into a written contract, unstamped and without seal, whereby the pauper covenanted to serve his master for three years to learn to make bricks, &c. on certain conditions; but the master did not bind himself to teach him to make them: held, first, that this contract was no proof of an apprenticeship being in the contemplation of the parties; but only a new hiring in the relation of master and servant; and, secondly, that such contract being void and illegal could not (even if it had shown an intention in the parties to contract for an apprenticeship) have done away with the original good contract of hiring and service, *R. v. Shinfield*, ii. pl. 512.
28. Where the father of the pauper contracted with *J. S.* that his son should be with him, and should work for him for two years, and have what he got, and should allow *2s.* per week out of his gains to *J. S.*, viz. *1s.* for teaching him the business of a frame-knitter, *9d.* for the rent of a frame, and *5d.* for the standing: held, that this was a contract of hiring and service, and not an apprenticeship; and that the son's having served under it was evidence that he had adopted the contract made by his father; and therefore he was entitled to a settlement by such hiring and service, *R. v. Burbach*, ii. pl. 513.
29. Where the father agreed with *R.* that *R.* should take his son for six years, to teach him the trade of a frame-work knitter, and he was to allow *R.* *9s.* per week for the first three years for teaching him, and his board and lodging: held, that this was a defective contract of apprenticeship, *R. v. Mount Sorrell*, ii. pl. 514.
30. Where, by a parol contract, the master agreed to teach the pauper to make stockings during the year, for which he was to receive two guineas, and the pauper was to have his earnings, paying his master for the use of the frame, &c. and the pauper continued in the service a year and a half, it was holden that the pauper did not gain a settlement by hiring and service, *R. v. Bilborough*, ii. pl. 382.
31. Where the parish officers, wishing to put out a child of the age of nine years as apprentice, upon the refusal of his mother, withdrew her parish allowance, but two years afterwards she not being able to support him, went to the parish officer and consented to her son's being put out, and by desire of the parish officer chose a master to whom the parish officer agreed to give three guineas, &c. and afterwards all the parties met and went before the justices, who, thinking that the master had already a sufficient number of apprentices, refused to bind the son, whereupon the parish officer, declaring that if he could not have him bound there, he would elsewhere, took the parties to an inn, and procured an indenture, which was filled up and executed, and the son, with the mother's consent, bound himself for seven years: held, that the sessions were not warranted in finding fraud so as to de-

fest the settlement under the indenture, *R. v. Kirby*,
ii. pl. 515.

III.

The Time and Place of Inhabitation.

32. An apprentice must reside 40 days as an apprentice under the indentures to gain a settlement, *Missenden v. Grimsfield*,
ii. pl. 518.

33. And he gains a settlement in that parish, which he last inhabited, though at different times, for the space of 40 days, *R. v. Cimmerster*,
ii. pl. 521.

34. For inhabitation at different periods, although a new settlement has intervened, may be connected so as to make 40 days' residence under indentures; and the settlement, in such case, shall be in the parish in which the apprentice lodged the last night, *R. v. Sandford*,
ii. pl. 528.

35. Therefore if an apprentice live with his master 40 days in A., then 40 days in B., and then one day in A., he is settled in A., *R. v. Brighton*,
ii. pl. 529.

36. Where a female apprentice removed with her mistress into a different parish, where her mistress afterwards lived with her son-in-law as a lodger, without gaining any settlement in the parish, yet it was held that the apprentice gained a settlement therein by inhabiting under the indentures, *Stoke Fleming v. Berry Pomeroy*,
ii. pl. 523.

37. But where a boy was bound apprentice to a cobbler, who rented a stall in the parish of St. Olave, but lodged at nights in the parish of St. Giles, and the apprentice lodged with his father in the parish of Whitechapel; it was held that he could not gain a settlement in St. Olave's, for the cobbler was not an inhabitant there by virtue of his stall; nor in the parish of St. Giles, for the apprentice never lodged there; nor in the parish of Whitechapel; although he inhabited there, yet it was held in pursuance of his master's business under the indentures, *R. v. St. Olave's*,
ii. pl. 519.

38. So where the apprentice of a carpenter served his master in St. Peter's, but lived, ate, and lodged at night with his mother in St. Olave's, it was held that he did not gain a settlement in either parish, *R. v. St. Peter's on the Hill*,
ii. pl. 524.

39. If the apprentice of a seafaring man live at his house in A. in the day-time, but lie every night on board his master's vessel in the parish of B., he gains no settlement in A., because a man can only be said to inhabit the place in which he lies or

lodges; nor in the parish of B., if it do not appear that his residence on board the ship was to watch or to do some other service on board, for and on account of his master, *St. Mary Colechurch v. Radcliffe*,
ii. pl. 530.

40. But, therefore, where the apprentice of a captain of a ship belonging to Bridport, served his master on board the ship, by residing and lodging therein while she lay in the harbour, for the purpose of taking care of the ship, and preventing the goods on board from being stolen or damaged, it was held, that as his residence was not casual or accidental, but serviceable to his master, he gained a settlement thereby in Bridport, *R. v. Burton Bradstock*,
ii. pl. 525.

41. So a sailor-boy who hired himself by the year to the boatswain of the *Chatham hulk*, and laid and victualled continually on board in the river Medway, while she lay at her moorings, swinging round with the tide, was held, by such residence, to gain a settlement in the parish in which the hulk was stationed, and not in that in which his master lived on shore, *R. v. Friendsbury*,
ii. pl. 401.

42. Where a master mariner, having no immediate occasion for his apprentice's service, the vessel being then in dock, offered either to turn him over to another master for a time, or let him go back to school, and the apprentice said he would go back to school, and learn navigation; and accordingly did so, and resided above forty days there: Held, that such residence was not a residence under the indentures, and that he did not thereby gain a settlement, *R. v. St. Mary Bredin, Canterbury*,
ii. pl. 535.

43. There must be an inhabitation forty days; for where the apprentice to a hosier served him in the day-time in his open shop; but, in pursuance of a covenant in the indentures, had his meat, drink, washing, and lodging all the time at his father's house in a different parish, it was held he did not gain a settlement in either parish, although his master, pursuant to another covenant in the indentures, paid the father half a crown a week in lieu of, and in consideration for, his board and lodging, *St. John Baptist v. St. James*,
ii. pl. 522.

44. But where the master died, and after the apprentice had finished all the work then on hand, the mistress told him that he must not stay with her; that there was no more work to do; and that he might go where he thought proper; and accordingly the apprentice went home to his father for the remainder of his time; it was held

that he gained a settlement in the parish in which the master lived, *R. v. Chick*,

ii. pl. 527.

45. So if an apprentice, after a residence of forty days, fall sick, and, on account thereof, go home to his father's house in a different parish, his settlement is in the parish where his master lives, although he continues more than forty days at his father's house, and although, at the time of his so going home, the indentures were given up, *R. v. Tichfield*,

ii. pl. 543.

46. For the residence of an apprentice with his father, mother, grandmother, or other relation or person in a different parish from his master, on account of illness, though with the consent of the master, is not referable to the apprenticeship, so as to gain him a settlement in such parish; *R. v. Barnby in the Marsh*,

ii. pl. 530.

47. But if the residence of the pauper be not a casual residence, but a residence provided by the master at the home of the pauper's relations, for the purpose of taking care of the pauper as an apprentice, such a residence will gain him a settlement under his indentures, *R. v. Charles*,

ii. pl. 565.

48. So where the apprentice of a captain in the coal trade having gained a settlement in *Poole*, knowing that his master, who lived at *Topsham*, was become a bankrupt and had absconded, applied to the agent and consignee of the ship at *Poole*, for money to carry him back to *Topsham*, where he went and resided with his uncle, not being able to find his master whom he never saw or served afterwards, it was held that he gained no settlement in *Topsham* by this residence, because he never returned to his master's service in that parish, *R. v. Topsham*,

ii. pl. 531.

49. Where an apprentice to a ship-owner served on board the ship as apprentice to the owner, which ship was employed in a coasting trade from *Bridport Harbour*, and the harbour was considered as the home of the ship, it was held that the apprentice gained a settlement in the parish of which the harbour was a part, *R. v. Burdon Bradstock*,

ii. pl. 525.

50. So where the apprentice to a captain of a ship in the coal trade, after having served three years, made his last voyage from *Topsham* to *Shields*, and from thence to *Poole*, where he remained upwards of forty days, and slept every night during that time on board the ship as it lay along-side the quay in the port of *Poole*, it was held that he thereby gained a settlement in *Poole*; for this is not a casual or accidental residence, but a residence in the actual

employ and service of his master in his trade and business, which in its nature required a shifting residence, *R. v. Topsham*,

ii. pl. 531.

51. So an apprentice who marries during his term, serves his master by day in one parish, but sleeps on nights in a different parish, gains a settlement where he lodges the last forty days, *R. v. Cusleton*,

ii. pl. 536.

52. Therefore where *Lord Boston's* gardener, who had served for more than a year under a yearly hiring, in the parish of *Hedder*, about ninety-five days before the expiration of the fourth year's service, married a woman of the parish of *Marlow*, and from the day of her marriage, and till the expiration of that year's service, lodged with his wife in *Marlow* forty nights, but not successively, and did not lodge forty nights elsewhere, from the time of his marriage till the expiration of the year, it was held that his settlement was in *Marlow*, *R. v. Hedder*,

ii. pl. 406.

53. An apprentice who went to lodge at his mother's in an adjoining parish to that of his master, for the purpose of getting cured of a disorder, but who continued to serve his master all the time by going on errands for him, and attending what he wanted, gains a settlement by such service in the parish where he lodged, *R. v. Stratford-upon-Avon*,

ii. pl. 511.

54. A parish apprentice and his master both on the permanent staff of the militia, in consequence of that circumstance resided together with his master and continued to serve him in the parish of *B.* for forty days: it was held, that this residence was sufficient, and that he thereby acquired a settlement in *B.*, notwithstanding they were both under the command of their superior officers during the whole time, *R. v. Chelmsford*,

ii. pl. 511.

55. By an indenture of apprenticeship it was stipulated that the master should provide meat, &c. during the term, except in the winter season, when the ship to which the apprentice belonged should be laid unrigged, during which time the apprentice was to be maintained by himself and friends, the master paying a compensation. Under this stipulation the apprentice during the winter, resided with his parents in the township of *B.* for more than forty days, not doing any work for his master during such residence: Held, that this was not a residence under the indenture, and conferred no settlement, *R. v. Brompton*,

ii. pl. 517.

56. An apprentice who lived and worked with his master in the parish of *J.*, was

home to his father in the parish of *R.* every *Saturday*, and slept there every *Saturday* and *Sunday* (with his master's leave), and returned to work on *Monday* morning. The apprentice having returned to work as usual on a *Monday*, left his master in the evening and never returned: Held, that the sleeping in *R.* being merely by way of indulgence, and not for the purposes of the apprenticeship, was not sufficient to confer a settlement, *R. v. Ilkeston*, ii. pl. 538.

51. An apprentice, after serving most of his time with his master in *S.*, obtains a subsequent settlement in *H.* by serving another master there for forty days, by the direction of his first master, and being then dismissed by his second master, the apprentice, unknown to his first master, and without any intention of returning into his service again, lodged for one night in the same parish of *S.*, and then went and worked in another parish for a month, till the expiration of his term: held, that the settlement was not brought back to *S.* by such casual lodging of the apprentice there, *R. v. Smarshden*, ii. pl. 533.

52. Where an apprentice, who worked and slept at his master's works in *C.*, at weekly wages, went with his knowledge on *Saturdays* and *Sundays* to *R.*, and slept there, and returned to his work on *Mondays*, and was received by him, and on the *Saturday* afternoon before *Shrove Tuesday* (during the night before slept at *C.*) received his pay, and never returned again to the service, and slept that and the following night at *R.*, but on quitting the works on *Saturday* had not formed any intention not to return, nor had he on the *Sunday*, nor could he fix the time when he determined not to return: held, that his settlement was at *C.*, his service having ended on his quitting on *Saturday*, *R. v. Rochester*, ii. pl. 534.

53. A person who has been educated in a hospital as an apprentice to one of the trades of the hospital, in the trade of lamp-dressing, does not gain a settlement in the place where that hospital is situated, as it is extra-parochial, *Clerkenwell v. Clerkenwell*, ii. pl. 517.

IV.

Discharging the Indentures.

54. Indentures of apprenticeship are not discharged by the bankruptcy of the master, *Buckington v. Shepton Bechamp*,

ii. pl. 539.

55. If an apprentice be bound to *A.* for the term of seven years, and after a service of five years the master, with the consent of

the apprentice, deliver up the indentures to the father of the apprentice, this is a discharge from the apprenticeship, *R. v. St. Mary Kalendar*, ii. pl. 540.

62. A parish apprentice after having served several years runs away, and during his absence his master dies; after which, but before he comes of age, he hires himself as a servant to another master, and serves the year before the time of his apprenticeship had expired: the apprentice gains a settlement by this hiring and service; for the apprenticeship was determined by the death of the master, *R. v. Eakring*,

ii. pl. 541.

63. Parish indentures cannot be discharged by an infant apprentice and his master; for his consent for such purpose is of no validity, and the whole policy of 43 Eliz. c. 2. § 5. would be thereby defeated, *R. v. Austrey*,

ii. pl. 542.

64. For to discharge the indentures of an infant parish apprentice, the assent of the justices and all other parties is necessary, *R. v. Langham*,

ii. pl. 546.

65. Indentures being mutually delivered up, are thereby virtually cancelled, *R. v. Titchfield*,

ii. pl. 543.

66. A parish apprentice bound out until he shall attain the age of twenty-four, agrees with his master, after he had attained the age of twenty-one, to cancel the indentures, and they were cancelled accordingly; the apprentice may afterwards gain a settlement by hiring and service, although the parish officers did not consent to the cancelling of the indentures, *R. v. Ecclesal Bierlow*,

ii. pl. 544.

67. For the assent of the parish officers is not necessary to the cancelling parish indentures, after the apprentice has attained the age of twenty-one; and therefore, if after that age the apprentice purchase of the master the remainder of his time, the apprenticeship is dissolved, although the indentures are neither delivered up nor cancelled, *R. v. Harburton*,

ii. pl. 547.

68. But the common indentures of an infant apprentice may be discharged, with the consent of all the parties concerned, *R. v. Weddington*,

ii. pl. 545.

69. *S. P., R. v. St. Mary Kalendar*, ii. pl. 540.

70. It is however doubted whether an infant can discharge his indentures; but if so, the act of his leaving his master's service and going into the service of another does not discharge them, *Ashcroft v. Bertles*,

ii. pl. 549.

71. Nor are they dissolved by his agreeing to purchase the remainder of his time, *R. v. Chipping Warden*,

ii. pl. 550.

72. Or by his leaving his master's service and

going into the king's service with his master's consent, *R. v. Hindringham*,

ii. pl. 548.

73. Where an infant bound himself apprentice for seven years by indenture, to which indenture he and his master were the only parties, and after serving some time, in consequence of the master's running away and leaving him, procured the indenture to be given up to him with the master's consent, and afterwards, during the seven years, hired himself as a yearly servant, and served a year: held, that he acquired a settlement by such hiring and service, for it was for the infant's benefit under the circumstances that he and his master should be at liberty to put an end to the indenture, *R. v. Mount Sorrell*,

ii. pl. 551.

74. Where the mother of an apprentice whose time had not expired, applied to his master to give him up to her, and the master having consented to it, and all having agreed to part, the apprentice went away; but the indenture, which was in the hands of a third person, was never applied for or given up: Held, that the apprenticeship was not put an end to by this agreement, although the master said that he would have given up the indenture if he had had it at the time in his possession, and afterwards refused to take back the apprentice, *R. v. Skeffington*, i. pl. 660.—ii. pl. 552.

75. An infant bound himself apprentice for seven years, and served three of them; having then quarrelled with his master, and the latter offered to sell him the remainder of his time for 6d., the infant paid the money, and went away and bound himself to another master in another parish: held, that the infant had no power to dissolve the first apprenticeship; the second binding, therefore, was invalid, and no settlement could be gained by service under it, *R. v. Great Wigton*, ii. pl. 553.

V.

Of Service with different Masters.

76. An apprentice may be bound a one master and serve another; and he shall gain a settlement in the parish where the master lives with whom he resides, *Holy Trinity v. Shoreditch*,

ii. pl. 554.

77. Therefore a service under a hiring for a year, part performed with the original master, and the remainder with a stranger to whom he had let his farm, is good service, if there be no dissolution of the original hiring for a year, *R. v. Ivinghoe*,

ii. pl. 414.

78. So where a farrier, after his apprentice

had served two years, hired him out by a verbal agreement to another master in a different parish, with whom he served the remaining five years of his time, it was held a good service under the indentures, and that he gained a settlement in the parish in which he inhabited with such second master, *St. Olave's v. Alkallons*,

ii. pl. 555.

79. So where a parish apprentice, after a service of forty days with her first master, was, by parol agreement, hired out to another master in a different parish, where she resided and worked above forty days previous to the expiration of the apprenticeship, the first master receiving her wages, and providing her with wearing apparel, it was held that her settlement was, under the indentures, in the second parish, *R. v. St. George's Hanover Square*,

ii. pl. 556.

80. Where a parish apprentice was assigned by his original master to J. S., by an instrument in writing, but there was no consent of two magistrates: held, that this was not a lawful assignment under 38 G.3. c. 57. § 7., but it was sufficient to show the consent of the first master to the service to J. S., and consequently such service was good as a service under the original indenture, and conferred a settlement, *R. v. Barleston*,

ii. pl. 563.

81. An apprentice assigned by his master's widow before administration granted, and turned over by the assignee under a parol agreement to a third master, gains a settlement by service with such third master, under the original indentures, *R. v. East Bridgford*,

ii. pl. 557.

S. P., R. v. Tavistock,

ii. pl. 565.

82. A parish apprentice whose indenture is delivered to a second master, and all interest in the apprentice relinquished by the first master, by indorsement on the indentures, gains a settlement by residing with such second master, *St. Peter v. Stoko Fleming*,

ii. pl. 548.

83. A parish apprentice is bound to A., and serves part of his time; then goes, with A.'s consent, to live with B.; then runs away, and lives with his mother; is then bound out by B. to C., with whom he resides the last forty days: he gains a settlement in the parish in which he resides with C., *R. v. Clapham*,

ii. pl. 559.

84. The master of a parish apprentice, not having sufficient work to employ her, consents to her hiring herself to another person in a different parish, with whom she resides for above forty days, and until within eight days of the expiration of her apprenticeship, and then returns to her

- first master; she gains a settlement under the indenture with the second master, *R. v. Framington*, ii. pl. 560.
85. An infant parish apprentice cannot gain a settlement under the indentures, by a hiring and service to a second master, upon a supposed discharge of the indentures, though by the express consent of the original master, *R. v. Austrey*, ii. pl. 561.
86. An apprentice working with several masters, under a general licence by the first master to serve where he would, gains no settlement thereby, *St. Luke's v. St. Leonard's*, ii. pl. 562.
87. An infant parish apprentice is bound to a widow in the occupation of a farm, until he should attain the age of twenty-four years, and after he had served about six years, she quitted the farm to her son, with whom the apprentice continued to live for several years, and then applied to his master to leave the service, and the master told him he might go where he pleased, and he accordingly went to the next statute-fair, and hired himself as a servant; this is not a service under the indentures, *Notton v. Rogstone*, ii. pl. 564.
88. A parish apprentice resides with his master for two years; is then turned over to a person in another parish, where he resides above forty days, but on his becoming a cripple is sent back to his original master, who sent him to board with his mother, where he resided above forty days, unable to serve his master, and is then discharged by the sessions as incapable of further service; he gains a settlement, under the indentures, in the parish in which his mother lived, *R. v. Charles*, ii. pl. 565.
89. But where an apprentice was bound to *Bready*, of the parish of *Selby*, where he had slept more than forty nights, but slept the last night of his apprenticeship at *Bready*, at his grandmother's, where he slept more than forty nights, in consequence of his being ill of a fever, but to which parish he went with the consent of his master, it was held that he gained no settlement thereby in the grandmother's parish, for his residence there was casual, and no more referable to his apprenticeship, than if he had resided in an hospital or prison, *R. v. Barnby in the Marsh*, ii. pl. 530.
90. If a master agree with his apprentice to furnish him with a loom, and permit him, on the payment of 1s. a-week, to work for himself; a service under this separation with another master in a different parish is a service under the indentures, although the apprentice married in the interval, *R. v. Offeron*, ii. pl. 566.
91. The master of a parish apprentice, after a service of four years, assigned her by parol to a second master, with whom she lived seven months, and then ran away and returned to the parish in which the first master resided, and lived there nine months as a hired servant at a public-house, but without any express consent either of the first or the second master, but both of them knew that she was living at the public-house as a servant: this is not a service under the indentures, for there must be the consent of the master either express or implied in order to an apprentice's gaining a settlement with another person, and the consent of the master is not implied by his knowing where the apprentice resides, *R. v. Ideford*, ii. pl. 567.
92. Where the master of an apprentice told him he had no further occasion for him, and he might go where he pleased, and the apprentice, hearing of another master, was going to him, and being met by his original master, and asked where he was going, answered that he was going to *Underhill*, his new master; to which the master replied, he might go there or where he pleased, it was held that this is not such a particular assent of the original master to the service with *Underhill* as would enable the apprentice thereby to gain a settlement, though the indentures were not delivered up or cancelled, *R. v. Crediton*, ii. pl. 576.
93. A parish apprentice was, before the passing of stat. 18 G. 3. c. 47. bound till twenty-four, and served till nearly attaining twenty-one, when his master, being about to leave the parish, and no longer wanting his service, told him that he might leave him and go where he liked, and shift for himself; but if he could not provide for himself, he might return to him; upon which he quitted, and when he was about four months past twenty-one, bound himself by indenture as apprentice to another master for three years, and served with him for the three years. Held, that he did not acquire a settlement by service under the second indenture, *R. v. Bow*, ii. pl. 581.
94. So where an apprentice being about to marry, told his master that he wished to provide and work for himself, to which the master consented, and said he might do the best he could for himself, but nothing was said about the indentures, and they were not in fact delivered up or cancelled; but he afterwards engaged to work with another master, who told the original master that he had got the apprentice at work; to which the original master an-

answered, *I am glad of it, he was a bad lad, and I could make nothing of him*; it was held not such a consent to the particular service as would confer a settlement with the second master, *R. v. St. Helen, Stonegate*, ii. pl. 577.

95. The master of several apprentices, upon his quitting business, proposed to assign all his apprentices, without mentioning either their names or number, to C., but no assignment was ever made; the pauper, one of the apprentices, was afterwards hired by C. as a servant for fifty-one weeks; and her former master, on meeting her, expressed his approbation of her having gone into the service of C.; the sessions having found that there was not a particular assent of the original master to the second service, and therefore the relation of master and apprentice never subsisted between C. and the pauper, this Court thought the sessions well warranted in that conclusion, *R. v. Ashby-de-la-Zouch*, ii. pl. 582.

96. Before the expiration of the term of an apprenticeship the apprentice asked his mistress's leave to go into another service, without mentioning where he was going, the mistress said, that she was not against it if he could better himself. The apprentice then went and hired himself to A. B., in another parish, for a year, at certain wages. He then returned to his mistress, and told her what he had done, and she said that she was not against it. The apprentice then went to his new place, and lived with A. B. for three months. Held that the service with A. B. was not a service under the indenture; first, because there was not a particular assent of the mistress to that service; and, secondly, because the service with A. B. was not as an apprentice, but as a servant under a contract of hiring, *R. v. Whitchurch*, ii. pl. 584.

97. If the master of an apprentice die, and his executors, at the pauper's request, agree that he shall go and live with another person; a service of forty days with such person, before the term of the apprenticeship expires, gains a settlement under the indentures, *R. v. Stockland*, ii. pl. 568.

See also *R. v. Ladoch*, ii. pl. 597.

98. The express consent by *parol* of a first master, to a service with a second master, is, for the purpose of settlement, a *legal assignment* of the apprentice, *R. v. Langham*, ii. pl. 569.

99. To give a settlement by service with another person, it is sufficient if the consent

sent of the first master appear from circumstances, *R. v. Bradninch*, ii. pl. 570.
100. The consent of the first master to a service with another person is sufficiently expressed by his giving the pauper a character, *R. v. St. Mary Lambeth*, ii. pl. 571.

101. An apprentice cannot gain a settlement by serving another master, unless there be a *consent* of the original master to the particular service, for a mere *recommendation* is not sufficient, *R. v. Sandford*, ii. pl. 573.

102. But it is sufficient, although the consent of the original master be not given until the service with the second master has commenced, *R. v. Bradstone*, ii. pl. 573.

103. And if an apprentice's first master give him leave to get another master, and *recommend* him to a *particular person* in the same trade, and make an agreement with him accordingly; a service with such second master for two months previous to the first master's delivering up the indentures, gains a settlement under the indentures, *R. v. Holy Trinity, Minorca*, ii. pl. 574.

104. So such a *recommendation* is sufficient, although the master and the apprentice had previously agreed that upon the payment of a certain sum the indentures should be cancelled, *R. v. Chipping Wardon*, ii. pl. 550.

105. So where an apprentice offered his master a guinea to let him off; to which the master agreed, and was also to give him a suit of clothes when the guinea was paid, but the indentures were not delivered up or cancelled, and under these circumstances the apprentice applied to his original master for leave to serve one Battishill, who would not take him without, and the master said *he might go with all his heart, and that it would be a good thing for him to learn the trade*; on which he went into the service of Battishill, but never paid his original master the guinea, it was held sufficient to support the inference that the original master had assented to the particular service, and, as the guinea was not paid, the indentures remained in force, *R. v. Shebbear*, ii. pl. 577.

106. If the consent of the executrix of the first master be in *writing*, it must be stamped as an *agreement*, to render the service with the second master effectual, *R. v. St. Paul's Bedford*, ii. pl. 575.

VI.

Of certificated Apprentices.

107. By 9 & 10 Will. 3. c. 11. "no person

- inhabiting under a certificate shall gain a settlement by apprenticeship."
108. By 12 Ann. c. 18. "apprentices to certificated persons shall not thereby gain a settlement."
109. By 33 G. 5. c. 54. "no apprentice to a person certificated from a benefit society shall thereby gain a settlement;"
110. An apprentice assigned by a certificate-man to a master living in another parish gains a settlement, *R. v. Petham*, ii. pl. 585.
111. But he must, in such case, inhabit forty days under the indentures in such other parish, *R. v. Bishopside*, ii. pl. 587.
112. So an apprentice who inhabits with his master for forty days under the indentures, gains a settlement, although his master afterwards obtains a certificate, *R. v. Clysthydon*, ii. pl. 586.
113. But if an apprentice be bound to a freeman, and before a service of forty days under the indentures the master receive a certificate, the apprentice, by the subsequent service, cannot gain a settlement, *St. Cuthbert's v. Westbury*, ii. pl. 588.
114. If a certificated man have a son born under the certificate, and the certifying parish bind out such son as an apprentice in a third parish, the son, by serving under the indenture, gains a settlement in such third parish, notwithstanding his father's certificate, *R. v. Silton*, ii. pl. 59.
115. The son of a certificated person who is bound an apprentice in the certificated parish, may, on his indentures being cancelled, bind himself apprentice in a different parish, and if he gain a settlement under the second indentures, he may afterwards gain a settlement by hiring and service in the parish to which his father was certificated, *R. v. Weddington*, ii. pl. 591.
116. An apprentice to a certificate-man in A. removed voluntarily with his master to B. where he continued forty days; he afterwards married a woman living in C., but continued to serve his master by day in B. and to lodge with his wife in C. until the term of his apprenticeship expired: and it was held that he gained a settlement in this case, notwithstanding the certificate, *R. v. Spottland*, ii. pl. 589.
117. An apprentice who has served three years out of four to a freeman cannot gain a settlement by serving the remainder of his time to a certificate-man, although in a different parish, and with the consent of his original master, *Romsey St. Michael's*, ii. pl. 590.
118. So where A. was bound a parish apprentice to B. a certificated man, and was assigned by him to C. a freeman, living in the same parish, with whom he lived more than forty days, and it was held that he gained no settlement thereby; for the 12 Ann. c. 18. expressly says, "that no apprentice of any person who is certificated shall gain a settlement by virtue of such apprenticeship or binding;" and as A. could not have gained a settlement under B., he cannot do it under C.; the legislature merely intending that no act whatever of this sort done by a certificated man should help to burthen the parish to which he is certificated, *R. v. Hinckley*, ii. pl. 593.
119. If an apprentice be bound to a certificate-man in the parish of A. and the certifying parish give the master a new certificate to the parish of B., the apprentice gains a settlement by serving his master the last forty days of his time in the parish of A. *R. v. St. Peter's Derby*, ii. pl. 592.
120. The apprentice of a master living at A., who has a certificate from B., but not delivered to the parish-officers of A., may gain a settlement by such apprenticeship, *R. v. Wensley*, ii. pl. 594.
121. A certificate extends to a wife, though the marriage was after it was granted, and no apprentice of such wife after the husband's death can gain a settlement in the certificated parish, *R. v. Hampton*, ii. pl. 595.
122. The son of a certificated person cannot gain a settlement in the certificated parish by apprenticeship, though the father, to whom the certificate was given, died six months before the apprenticeship expired, *R. v. Alfreton*, ii. pl. 596.
123. Nor can an apprentice to the son of a certificated person gain a settlement by such apprenticeship, if his master continue to reside in the certificated parish with his mother after his father's death as part of her family, although he is of age, and is carrying on business for himself; such circumstances not amounting to emancipation, *R. v. Sowerby*, ii. pl. 597.

VII.

Evidence of Apprenticeship.

124. The sessions may receive parol evidence of an apprenticeship in order to draw a conclusion of the fact that the binding was by indenture, *R. v. East Knoyle*, ii. pl. 598.
125. Where the sessions presumed that an indenture of apprenticeship executed thirty years before, and under which the apprentice had regularly served his time for seven years when the indenture was given up to

him and proved to be lost, and when the parish in which he was settled under such indenture has relieved him for the last twelve years, was *properly stamped* in proportion to the apprentice's fee of 12*l.* received by the master, the court of king's bench held the presumption right, and confirmed the judgment of the sessions, although the deputy register and comptroller of the stamp duties proved that it did not appear in the office that any such indenture had been stamped or insolled during that period, *R. v. Long Buckby*,

i. pl. 658.

126. But if the indenture be in existence, the indenture itself must be produced; for being in writing, that is the best evidence of the fact of binding, *R. v. Holbeck*,

ii. pl. 599.

127. And therefore, before parol evidence is received, it must appear that the indentures are destroyed, or cannot be found or produced, *R. v. St. Helen's*, ii. pl. 600.

128. A soldier, being examined under the mutiny act respecting his settlement, deposed, that he had been bound an apprentice to *B.* and had lived with him five years; and his wife, on her examination by the sessions, deposed, that she had heard him declare the same: this examination, confirmed by the parol testimony of his wife, is good proof of an apprenticeship, *R. v. St. Michael's, Bath*, ii. pl. 601.

129. A respondent parish intending, on an appeal, to prove a settlement by reason of subsisting indentures, gave notice to the appellants to produce it; but, on its being produced, the respondents had no evidence to prove the sealing and delivery; and it was held, that as the deed came out of the hands of the opposite party, after notice to produce it, it must be taken *prima facie* to have been duly executed, *R. v. Middlesex*,

ii. pl. 602.

130. Parol evidence may be given to shew that indentures once existed and that they are lost or destroyed, *R. v. Castleton*,

ii. pl. 603.

131. And then the sessions may presume that they were stamped and the duty paid, *R. Badby*,

i. pl. 649.

132. An agreement between the first and second master cannot be given in evidence if not stamped, nor can parol evidence thereof be given, *R. v. St. Paul's, Bedford*,

ii. pl. 604.

133. But parol evidence of an independent fact may be received, though it shews an unstamped agreement intended for an apprenticeship, *R. v. Laindon* ii. pl. 605.

SETTLEMENT BY ESTATE.

- I. *The Statutes.*
- II. *The Estate.*
- III. *The Value.*
- IV. *The Residence.*
- V. *Of Certificates.*

I.

Of the Statutes.

1. By 9 G. 1. c. 7. § 5. "no person shall gain a settlement by virtue of any purchase of any estate or interest whereof the consideration for such purchase doth not amount to the sum of *thirty pounds bona fide paid*, for any larger or further time than such person shall inhabit such estate."

II.

Of the Estate.

2. An estate for life or of inheritance, though under ten pounds a-year, will, by a residence thereon of forty days, give a settlement, *Harrow v. Edgware*, ii. pl. 606.
5. If a man die possessed of a lease for years, and his *next of kin* enter and reside upon the demised premises, he does not thereby gain a settlement until forty days after confirmation of his title by obtaining letters of administration, *South Sydenham v. Lamerton*, ii. pl. 612. a.
4. A sole next of kin has such an equitable interest in a leasehold tenement of the intestate, that she gains a settlement by residing forty days in the same parish, after the intestate's death, before administration granted to her, *R. v. Horsley*, ii. pl. 646.
5. Where an emancipated son lived with his father in a cottage of the yearly value of 30*s.*, and worked as a day labourer for himself, of which house his father then and for many years before was possessed for the residue of a term of years determinable on lives, and whereof he died so possessed without a will, and the son, after the death of his father, and having a brother then living, with whom he divided the effects, continued to live on the estate for many years, but did not take out letters of administration until after the lease expired, it was held he did not thereby gain a settlement; for not having taken out administration, his right to the estate never vested, and there was no time during the continuance of the lease that he was forty days irremovable, *R. v. Widworthy*, ii. pl. 612.
6. So where an estate was devised to *A.*, his executors, administrators, and assigns, for ninety-nine years, if the said *A.* and *B.* his wife, and *C.* his brother, or any or either

- of them, should so long live; and *A.* died intestate, leaving *B.* his wife, and four children; and *B.* the wife, after a residence of forty days, sold the remainder of the term, and after such sale took out administration of the estate and effects of her husband; the court held, that as the children were entitled to two-thirds, the widow was not properly, and in the sense of the cases, the sole next of kin; and the whole interest not vesting in her for her own use, she did not gain a settlement by residence on this estate, as she had not taken out letters of administration to her husband while it continued in her possession, *R. v. North Curry*, ii. pl. 681.
7. And where a father died intestate, leaving six children, and was at the time of his death possessed of a tenement for the remainder of a term of ninety-nine years determinable on the death of himself and his eldest daughter then living, and the daughter took possession of the estate, and resided thereon for more than forty days, but neither she nor any other person ever administered to the estate and effects of her father; the Court said, that there is a great difference between a sole next of kin, and where several persons in equal degree have all of them an equal right, *R. v. Cold Ashton*, ii. pl. 617.
8. But this point does not appear to be settled; for by ASHURST, *Justice in R. v. North Curry*, more has not been said at any time by the Court, even in the case of one solely entitled in every sense, than that such a case would deserve consideration, *R. v. North Curry*, ii. pl. 621.
9. If a widow become possessed of the remainder of a long term of years as administratrix of her husband, and demise the premises, except "one bay of building with a leasehold for a habitation for herself," for twenty-four years, at a pepper-corn rent, and live in the part of the premises so reserved and marry again; her husband gains a settlement by residing forty days on this part of the estate, *Murray v. Grandborough*, ii. pl. 609.
10. If a house be vested in trustees to the separate use of a wife, with the usual clause that her receipt shall be a discharge to the trustees for the rents and profits, and that the rents should not be subject to the husband's debts, yet the husband gains a settlement by residing forty days on this estate, *R. v. Offchurch*, ii. pl. 656.
11. So also where the pauper married a woman who was then and had been three years before in possession of a house and garden, which had been given to her by deed by a friend who had been owner of the premises for upwards of thirty years before, and in which the pauper and his wife lived for seventeen years after their marriage, without paying any rent or being interrupted in the enjoyment of it by the lord of the manor or any other person, it was held that he gained a settlement by residing on this estate, *R. Brangwyn*, ii. pl. 625.
12. But a mere right of dower will not give a settlement to a second husband, *R. v. Painswick*, ii. pl. 627.
13. So the executor of a tenant from year to year, of an estate under 10*l.* a-year, may gain a settlement by residing on it forty days, though he do not prove the will, *R. v. Stone*, ii. pl. 640.
14. A man possessed of a term of years devised the premises, and all his other estate, both real and personal, to his son, his heirs, executors, administrators, and assigns, on condition that he pay a certain annuity to his mother, and made his son sole executor; the son, after probate of the will, gains a settlement by a residence of forty days on the leasehold premises, although it do not appear that the annuity was paid, *R. v. Sundrish*, ii. pl. 611.
15. But where the pauper's grandmother had left him an annuity of 10*l.* payable out of her estate, and died possessed of personals to the amount of 33*l.* and an estate for years determined on his mother's death; his residence on such estate gains no settlement, *R. v. Stockley Pomroy*, ii. pl. 628.
16. But the family of a man who has an estate from year to year cannot be removed therefrom while his interest continues, *R. v. Leeds*, ii. pl. 612.
17. But the remainder of a term purchased for 47*l.* is a sufficient estate to confer a settlement, *R. v. Stainfield*, ii. pl. 614.
18. But a wife in such case cannot be removed, although the estate on which she resides is not her own, but her husband's, *R. v. Aylthrop Rooding*, ii. pl. 616.
19. The son and heir of a tenant by courtesy of an estate of 4*l.* a-year cannot, after his father's death, be removed from his residence on such estate to another place of settlement which his father had gained by renting a tenement of above 10*l.* a-year, *R. v. Hasfield*, ii. pl. 613.
20. So if a man devise an estate to trustees to be sold to pay debts, and to divide the surplus, if any, between *A.*, *B.*, and *C.*; *A.* has an equitable interest in the estate, and by residing thereon forty days gains a settlement, *R. v. Wincingham*, ii. pl. 631.
21. The widow of a man who dies seized of

- a house gains a settlement by residing thereon for forty days in right of her dower, *R. v. Painswick*, ii. pl. 627.
22. A widow, before assignment of dower, has not such an interest in the land of which she is dowerable as to be irremovable from the parish in which the land lies, *R. v. Northweald Bassett*, ii. pl. 662.
23. A. purchased a cottage with a small piece of ground for five pounds, and lived in it with his family under a certificate till his death, leaving his widow and four children in the premises, where they afterwards resided for ten weeks, the eldest son being nineteen years of age, when being seized with the small pox, the widow became chargeable to the parish, and it was held that the parish was bound to maintain her; for that she was residing irremovably on this estate for more than forty days, which gave her a settlement in the parish, *R. v. Long Wittenham*, ii. pl. 55.
24. A woman, on her marriage with the copyholder of a manor where widows are entitled to *freebench*, gave a bond that the son of her intended husband by a former wife should have possession of part of the copyhold estate after the death of her husband, on condition of his repairing the part of the house reserved for her; and after the death of her husband delivered up the possession to the son according to the bond; the son gained a settlement by forty days' residence on this estate, *R. v. Lopen*, ii. pl. 635.
25. If a man build a cottage upon a waste without licence, and after thirty years' enjoyment without any molestation from the lord of the manor, it descends to his daughter, she, or, if married, her husband, gains a settlement by residing thereon for forty days, although there appear to have been no original grant of the ground on which the cottage was erected, *Ashbottle v. Wyley*, ii. pl. 610.
26. So where a son continued, after the death of his father, thirty years in possession of a cottage built on the waste, paying an acknowledgment of 2s. 6d. a-year to the lord, it was held he thereby gained a settlement, although the possession was not adverse, *R. v. Garway*, ii. pl. 623.
27. So where a man without licence built a cottage on the waste, and lived in it nineteen years and a half without interruption, and a year afterwards was ejected by a mortgagee to whom he had pledged it for 15*l.*, and then sold it, it was held that he gained a settlement by residing on this estate for forty days, after he had been in possession of it for twenty years, *R. v. Bitton*, ii. pl. 634.
- Same point, *R. v. Brungwyn*, ii. pl. 635.
28. So a cottage built on a spot of ground given to the father of the pauper, and which had continued uninterruptedly in the family near twenty years, is a sufficient estate to confer a settlement, *R. v. Butler-ton*, ii. pl. 641.
29. If the mortgagee of several houses, after recovering possession in ejectment, permit the mortgagor to inhabit one of them for a particular purpose, the mortgagor gains no settlement by such residence, for he was not in possession as mortgagor, *R. v. Catherington*, ii. pl. 638.
30. If a man who is insolvent has conveyed his estate to trustees for the payment of his debts, and afterwards, before the trust is performed get fraudulently into possession, a residence of forty days will not gain a settlement, *R. v. St. Michael's, Bath*, ii. pl. 639.
31. A cottage was leased for 99 years, determinable on lives, purchased by the pauper's wife before marriage, and in the lifetime of her first husband, conveyed by them to a trustee, in trust that he should by sale or mortgage raise 10*l.* for the benefit of the parish, by whom the family had been before relieved to that amount, interest and charges, and after payment of the same in trust to reassign the premises: the parties always continued in possession, and it did not appear whether the money was ever paid, or what was the value of the cottage, and it was held that on the death of the first husband, the pauper, who married the widow, gained a settlement by residing forty days in the cottage of which she had retained the possession; for the conveyance amounts to no more than a mortgage; and the mortgagor continued in possession without fraud, *R. v. Edington*, ii. pl. 643.
32. But where a pauper purchased a leasehold tenement for less than 30*l.*, and afterwards conveyed the whole term to one in trust to let the premises, and out of the rents and profits to repay himself 10*l.* advanced thereon, and then to apply the rents and profits to the separate use of the pauper's wife during her life, and afterwards to the pauper's own use for life, if he survived her, and afterwards amongst their children, and the trustee suffered the pauper to continue to reside in the house for above forty days, until becoming chargeable to the parish, he was removed, it was held that he gained no settlement by such residence; for he had no remain-

- ing interest in him at the time, but at most a doubtful and contingent future interest, it being uncertain whether the 10*l.* would be ever paid off, and even if it were, it would not give him any right to reside upon the premises, *R. v. Tarrant Launceston*, ii. pl. 644.
33. Before the statute 9 G. 1. c. 7. § 5. a person admitted into a copyhold for life, though only worth 25*s.* a-year, gained a settlement by residing on such estate for forty days, *Harrow v. Edgeware*, ii. pl. 608.
34. But since the statute, where the father of the pauper surrendered to him a copyhold estate of 25*s.* a-year, to which he was admitted and lived upon it for a year, it was held to be a purchase, though the party paid no money for it, and therefore that his residence thereon did not gain him a settlement, *R. v. Sawbridgeworth*, ii. pl. 637. *n.*
35. But the principle upon which this case was determined is denied, *R. v. Upton*, ii. pl. 637.
36. A grant of a copyhold with 1*s.* fine, 1*s.* heriot, and 1*s.* rent, is a purchase within 6 G. 1. c. 7. § 1., *R. v. Warblington*, ii. pl. 634.
37. The mother of an infant copyholder under 14, was holden to be guardian by law of the copyhold, there being no custom of the manor for appointing a guardian, and therefore entitled to reside irrevocably on the estate, *R. v. Wisby*, ii. pl. 652.
38. The taking a grant of a licence from the lord of a manor to erect a cottage on a piece of land, rendering an annual rent of 10*s.* 6*d.* as a quit-rent, and also a grant of a licence to inclose a piece of ground for a garden to the said cottage, both being parts of the waste, and building a cottage thereon, and residing in it a year and half, were held not to confer a settlement; this being a licence only, and not a grant of any interest in land, *R. v. Horndon-on-the-Hill*, ii. pl. 654.
39. A built a house on the waste of a manor by licence from the lord, resided in it two years, and then sold it to B. The latter sold it to C. for 30*l.*, but no conveyance was executed. C. resided in it five years, and paid 1*s.* per annum rent to the lord, and then sold his interest. No adverse claim was made: Held that though C. paid a consideration of 30*l.* when he purchased his interest, he did not acquire by purchase an interest or estate sufficient to confer a settlement within statute 9 G. 1. c. 7. § 5. *R. v. Hagworthingham*, ii. pl. 660.
40. Where there is no custom for that purpose, the lord of a manor cannot make a new grant of a copyhold; and if he does, the grantee acquires thereby no settlement by estate: held also, that a grant by the law of copyhold land, paying a yearly rent of 2*s.* 6*d.* (which rent in a subsequent part was called a quit-rent) is a purchase within 6 Geo. 1. c. 7., and being under 30*l.*, confers no settlement, *R. v. Hornchurch*, ii. pl. 657.
41. One who is resident on an estate granted to him for lives, in consideration of two guineas fine, and one shilling rent, cannot be removed therefrom though actually chargeable; but it seems that he cannot gain a settlement by forty days residence as on his own estate under 9 G. 1. c. 7. § 5. the consideration being under 30*l.* *R. v. Martley*, ii. pl. 645.
42. A conveyance from a father to his daughter, in consideration of natural love and affection, of the residue of a term, is not a purchase within 9 G. 1. c. 7. and, therefore, a residence thereon of forty days will gain a settlement, although the original consideration paid by the father was only 20*s.*, *R. v. Marwood*, ii. pl. 615.
43. For the 9 G. 1. c. 7. § 3. was only intended to prevent persons who made small purchases for pecuniary considerations from gaining a settlement, but a donation from a father to a child, does not come within the statute, and therefore a gift in consideration of natural love and affection and of ten pounds, the estate being worth fifty, is not a purchase within it, *R. v. Upton*, ii. pl. 637.
- And *R. v. Ingleton*, ii. pl. 621.
44. So if a woman purchase an estate under 30*l.* and marry, it is sufficient to give an original settlement to the husband, and a derivative settlement to the wife, although insufficient to have given her one in her own right, *R. v. Ilmington*, ii. pl. 622.
45. A devise is not a purchase within 9 G. 1. c. 7.; and therefore if an estate be devised to the wife of a certificate-man for her life, and they enter into and reside upon the same, they thereby gain a settlement, *R. v. Shenston*, ii. pl. 612.
46. A father having purchased a tenement for less than 30*l.* devised in trust to be let to farm during his daughter's life, and to pay her the rents after deducting the expences: held that by forty days residence thereon, by permission of the trustees, after her father's death, she gained a settlement, *R. v. Holm East Waver Quarter*, ii. pl. 650.
47. So the remainder of a term of years devised to four executors, is a sufficient estate to give any of them who reside

- thereon for forty days, a settlement in the parish, *R. v. Uttoseker*, ii. pl. 630.
48. So also where a person was possessed of cottage and six acres of land, under the yearly value of 10*l.* which he held as *tenant from year to year*, and died, making the *pauper* his executor in trust to divide the property among the testator's children, and the executor entered and resided on the premises, it was held a sufficient estate to gain him a settlement in the parish, *R. v. Stone*, ii. pl. 640.
49. So a cottage devised to a son with directions that his father and sister should have free liberty to dwell therein during their lives, is a sufficient estate, *R. v. Woburn*, ii. pl. 628.
50. The surrender of an old lease which had been many years in the family, and the taking of a new one, is not a purchase within 9 G. 1. c. 7. *R. v. Tarrant Launceston*, ii. pl. 632.
51. A conveyance after marriage by the wife's father to the husband only, of an estate under the value of 30*l.* it appearing to be grounded on natural affection, and intended for the use of both husband and wife, is not a purchase within the 9 G. 1. c. 7. § 5., *R. v. Charlton*, ii. pl. 635.
52. A conveyance from a father to a son in consideration of *natural love and affection*, and *ten pounds*, is not a purchase within 9 G. 1. c. 7., *R. v. Upton*, ii. pl. 637.
53. A voluntary grant for life of a customary cottage to a daughter, is a sufficient estate, though of only 4*l.* a-year value, *R. v. Ingleton*, ii. pl. 621.
54. If *A.* residing on a cottage of his own, grant it by lease and release to *B.* in fee, in consideration of 36*l.*, with a proviso "that *A.* shall live and occupy the said cottage with the appurtenances, as he theretofore had done, and then did, for life;" *B.* only takes a remainder after an estate for life in *A.*; and therefore has not such an interest during *A.*'s life as will enable him to gain a settlement by a residence on the estate; for by the word "*occupy*" in the proviso the whole estate is reserved to *A.*, *R. v. Ealington*, ii. pl. 630.
55. An estate belonging to the grandfather of a pauper whose mother on her father's death never reduces it into possession, gives a settlement to *her son*, who on her death takes the estate in *fee*, but not to *her husband*, who does not take as *tenant by the courtesy*, *R. v. Great Farringdon*, ii. pl. 642.
56. An estate of above 30*l.* though purchased with borrowed money, is sufficient, *R. v. Tadford*, ii. pl. 666.
57. Thus where *A.* agreed to purchase a copyhold estate of *B.* for 60*l.* which was then mortgaged to *C.* for 50*l.* and he paid the 10*l.* and was admitted subject to the mortgage interest in *C.*, and afterwards borrowed 50*l.* of *D.* and paid off the mortgage, and then mortgaged the estate to *D.* for the 50*l.*, it was held that *A.* gained a settlement by residing thereon for forty days, *R. v. Chailey*, ii. pl. 671.
58. A guardian in soccage, residing on the ward's estate for forty days, gains a settlement in the parish; and cannot be removed from the possession of it at any time, *R. v. Oakley*, ii. pl. 647.
59. There cannot be a guardian in soccage of an equitable estate; and therefore where a pauper married the widow of a man who had paid for and been let into possession of a freehold cottage, and had died leaving a daughter, but without having had any legal conveyance executed to him in his lifetime; it was held that the pauper's residence in the cottage for forty days did not confer a settlement on him, the widow not being guardian in soccage to the daughter. Held also, that the court will not take notice of doubtful equitable estates, *R. v. Toddington*, ii. pl. 656.
60. Devise to the use of trustees in fee, in trust (after payment of debts) to receive the rents for the benefit of her brother *M. S.*, his wife and children, all or any of them, during his life, as they should think proper, and after his decease in trust for her nephew, &c. Held that *M. S.* who, after the death of the testatrix, by permission of the trustees, occupied until his death a cottage in the township where the lands were situated, did not acquire a settlement thereby, the rents and profits of the said lands having been insufficient to pay testatrix's debts, and *M. S.* at the testatrix's decease, and from that time until his own decease being an uncertificated bankrupt, *R. v. Darlington*, ii. pl. 666.
61. Where trustees of lands held in trust to pay 40*s.* per annum out of the rents to the poor, and the residue to a schoolmaster to be nominated by them, nominate a schoolmaster by an agreement, by which they are to pay a salary less than such residue: held that such appointment, though irregular in its form under the will, is sufficient to give him a life-interest in the school-house, &c. of which he was put in possession, and to enable him to gain a settlement by residence thereon; and the finding of the sessions "that the appointment was fraudulent" must be understood as referring to the fraudulent withholding by the trustees of part of the rents from

- the schoolmaster, and not as imputing fraud to the schoolmaster himself, *R. v. Ourry-le-Moor*, ii. pl. 648.
62. An attainted felon having been discharged by an order of the secretary of state, under the sign-manual signifying his Majesty's pleasure to grant him an unconditional pardon, and directing his name to be inserted in the next general pardon, (of the issuing of which pardon there was some negative evidence,) and having afterwards purchased a copyhold for more than 30 ℓ ., to which he was admitted upon surrender formerly made, and resided on and received the issues and profits of it for nine years, without impeachment of his title, gained a settlement by such residence thereon for forty days, and communicated such his settlement to an unemancipated child, part of his family, *R. v. Haddenham*, ii. pl. 649.
63. Where a pauper, as a freeman of a town, was entitled during his residence there, together with the other freemen, to a stinted common of pasture on a neighbouring moor for his own cattle, and also to a right to cut peat for his own use, and get lime-stones, &c. on the moor, and to put his children to the town school free of expence, at which school two of his children were placed at the time of his removal; but it did not appear that he had ever used the common of pasture, or had any cattle with which to exercise it: held, that these rights did not amount to such an estate as to make him irremovable, *R. Worknorth*, ii. pl. 651.
64. Grandfather, father, and son, and the grandfather gave the father a piece of land, on which he immediately built a house, and continued in possession for thirty years, without paying any rent or acknowledgment, sometimes residing in the house with his family, and at other times letting and receiving the rents: held, that the son, who ceased to be a part of his father's family fifteen years after the building of the house, was entitled to the settlement which the father gained by residing in the house, *R. v. Calow*, ii. pl. 655.
65. *L. F.* being seised in fee of a cottage, demanded the same to the overseers of the poor for one thousand years, reserving a pepper-corn rent, and continued to reside there. Being sick, his daughter and her husband came, by permission of the parish officers, to reside with and take care of him; after his death, the daughter being his heir, they continued to reside there above forty days, claiming a right to the possession. Held, that they thereby gained a settlement, being entitled to the reversion, and the residence not being fraudulent, *R. v. Staplegrave*, ii. pl. 658.
66. A written agreement was made for the purchase of an estate, to be paid for by two instalments: the first was to be payable within a few days after the signing of the agreement, and the last after the expiration of seven months; the vendor was to make out a good title on the payment of the last instalment, and convey the premises, but the purchaser was to be let into possession upon the payment of the first instalment; the purchaser paid the first instalment and was let into possession, and continued in possession for a year and a half; but the last instalment was never paid, nor any conveyance ever executed, and the purchaser afterwards gave up the contract upon receiving back part of the first instalment: held, that under this contract the purchaser did not acquire an equitable estate so as to gain a settlement under the 9 G. 1. c. 7. § 5. *R. v. Geddington*, ii. pl. 661.
67. *A.* made a parol agreement with *B.* for the purchase of a cottage and garden for 40 ℓ .; *A.* took possession and paid 30 ℓ . on account, and resided on the premises; no conveyance was executed; after *A.* had been in possession twelve months, he sold the property for 40 ℓ . to *C.*, to whom he gave up possession. *A.* afterwards paid the remainder of the purchase-money to *B.*: held, that *A.* did not gain any settlement by the purchase of any estate or interest within the 9 G. 1. c. 7. § 5., *R. v. Llantillo Grosvenny*, ii. pl. 663.
68. The lord of a manor granted a lease of a cottage for thirty-one years to *A.*, who resided in it above a year, and died, leaving a widow and three daughters; administration was granted to the widow, but no distribution of the estate was made; after his death the widow, and by her permission one of the daughters and her husband, resided in it some years: held, that the daughter or her husband, in her right, had not any equitable estate in the cottage, and that no settlement was gained by their residence in it, *R. v. Berks-well*, ii. pl. 659.

III.

The Value of the Estate.

69. A copyhold tenement, which, with the fine and fees paid to the court, is of the value of 30 ℓ ., is sufficient within the 9 G. 1. c. 7. to gain a settlement, although the officers of the parish find money to pay the fine and fees. *St. Paul's Walden v. Kempton*, ii. pl. 660.

70. A lease of fifty years of a cottage, worth 5*l.* a year, at 6*d.* a year rent, upon which the purchaser resides for twenty-five years, and then sells the remainder of the term for 32*l.*, is an estate of sufficient value to gain a settlement, *R. v. St. Mary, White-chapel*, ii. pl. 665.

71. If a man purchase a house and curtilage for 39*l.*, but pay only 9*l.* himself, the remainder being paid for him by a friend, to whom he mortgaged the premises as a security, and who, after the expiration of four years, entered under his mortgage, and turns out the purchaser; this is a purchase of the value of 30*l.*, and will give a settlement, *R. v. Tedford*, ii. pl. 666.

72. So if *A.* agree to purchase a copyhold estate of *B.* for 60*l.* which was mortgaged to *C.* for 50*l.*, and pay the 10*l.*, and is admitted subject to the mortgage-interest in *C.*, and afterwards borrow 50*l.* of *D.* to pay off the mortgage, and then mortgage it to *D.* for the 50*l.*, he gains a settlement by residing forty days thereon, *R. v. Chaisley*, ii. pl. 671.

73. The mortgagee of a term for 15*l.* to whom 1*l.* 10*s.* were due for interest, and 18*l.* 10*s.* more by bond and simple contract, who, on the death of the mortgagor takes out administration as a principal creditor, and thereby enters and becomes possessed of the estate, gains a settlement by a residence of forty days, *R. v. Stockland*, ii. pl. 667.

74. The sum given for an estate is the true criterion of its value, and if that be under 30*l.* no settlement can be gained in respect of the additional value it may acquire from subsequent improvements, *R. v. Dunchurch*, ii. pl. 668.

75. Where *A.* contracted for the purchase of a copyhold estate for 39*l.* mortgaged to another person for 32*l.* and paid 7*l.*, and was admitted to the estate subject to the mortgage, he did not gain a settlement by it under 9 G. 1. c. 7. *R. v. Mattingley*, ii. pl. 669.

76. Where the pauper purchased a tenement for more than 50*l.*, but paid down less than 50*l.*, the residue of the purchase-money remaining upon the mortgage of the premises, and after residing upon such tenement for more than forty days, sold the same to another person, who, on the completion of the purchase, paid the sum due on the mortgage to the original vendor, and the residue of the purchase-money to the pauper; at which time the pauper quitted the tenement, not having resided on it forty days after the payment of such mortgage to the original vendor

held, that the pauper did not gain a settlement by residing on such estate, *R. v. Olney*, ii. pl. 672.

77. If the consideration expressed in the deed of conveyance be as twenty-eight pounds, yet parol evidence may be given to shew that the real consideration was to the amount required by the statute, *R. v. Scammonden*, ii. pl. 670.

IV.

Of the necessary Residence.

78. A residence in any part of the parish in which the estate is situated, is sufficient, *Ryship v. Harrow*, ii. pl. 673.

79. But a residence either in the parish or on the estate, is absolutely necessary; for if an estate descend to a person, he cannot be removed to the parish in which it lies, unless he has resided forty days, *Wookey v. Hinton Blewet*, ii. pl. 674.

80. *A.* was settled and lived in *Sowton*, but had an estate of his own in *Sydbury*, in the possession of *B.* as his tenant, and being in distressed circumstances, he left his children at a public house in *Sowton*, went to *Sydbury*, took possession of his estate, and while he lived at a public house in *Sydbury*, employed himself in repairing and improving the premises, frequently going backwards and forwards between *Sowton* and *Sydbury*, until he had been more than forty nights in the latter place at different times; but he had no bedding or goods, or stock on the premises, nor paid any rates or taxes, but lodged at the public house as a guest or traveller, and this was held a sufficient residence to give him a settlement in *Sydbury*, in right of his estate; for it makes no difference whether he was at his own house, or at another person's, or at an alehouse; he had quitted *Sowton*, with a view to make *Sydbury* his home, and he was forty days in an irremovable state, *R. v. Sowton*, ii. pl. 675.

81. Therefore, if a person live in a parish where he has an estate in common with his mother and sisters, he thereby gains a settlement, *R. v. St. Nyott's*, ii. pl. 676.

82. And where a pauper had a freehold estate in the parish of *Sodg field*, which he let to a tenant, and undertook at the same time to sink a cellar and make some repairs in the premises; of which the tenant took possession, and opened it as a public-house; the pauper afterwards went in pursuance of his agreement to *Sodg field*, for the sole purpose of making the repairs and sinking the cellar, on which work he was

occupied for upwards of forty days, during which time he resided as a lodger to his tenant in the house: it was held, that he thereby gained a settlement in the parish, the estate having come to him by descent, such residence being equivalent to a residence in any other part of the parish, *R. v. Houghton le Spring*,
ii. pl. 678.

83. So where, during the residence of the pauper in the parish of *Blakemere*, a freehold estate descended to his wife and her sisters as coparceners in the same parish, and in a month after the pauper and his wife contracted to sell their share, but the conveyance was not actually executed for more than forty days after their title accrued, it was held that the pauper was thereby settled in *Blakemere*, although the estate during all the time was in the occupation of another, *R. v. Dorstone*,
ii. pl. 679.

84. The residence must be for the full number of forty-days, *R. v. West Shefford*,
ii. pl. 677.

86. But it need not be a continued residence for forty successive days, *R. v. St. Nyott's*,
ii. pl. 676.

V.

Of certificated Persons.

88. If a copyhold estate of 20l. a-year descend to the wife of a certificated man, the certificate is discharged by a residence of forty days on such estate, *Beauchamp v. Eastwoodkey*,
ii. pl. 681.

89. So if an estate be devised to the wife of a certificated man, *R. v. Shonstone*,
ii. pl. 618.

90. A certificated person, who resides forty days on leasehold premises purchased by him, gains a settlement, notwithstanding the Stat. 9 & 10. W. 3. c. 11.; for the estate required as well by purchase as descent, will avoid a certificate, though under 10l. year, *R. v. Stangfeld*,
ii. pl. 685.

91. If a certificate-man shall make a purchase, and an apprentice live with him forty days on the purchased estate, he thereby gains a settlement, *Ivinghoe v. Stonebridge*,
ii. pl. 682.

92. If a certificate-man make a *bond fide* purchase of a house for 42l. and live in it forty days, he gains a settlement, although he sell it immediately after the forty days are expired, *R. v. Deddington*, ii. pl. 684.

93. A father dies intestate, by which his daughter, married to and living with her husband under a certificate, becomes entitled to a house and land in the certificated parish for the remainder of a term,

determinable on her death; the certificate man gains a settlement by a residence of forty days on this estate, after being in possession for twenty years, although no administration was ever granted of his father-in-law's effects, *R. v. Cold Ashton*,
ii. pl. 685.

92. If a certificate-man and his wife purchase a house, and pay for the purchase thereof 19l. and upwards, and then the husband lays out 15l. in repairs and alterations, this estate will not give a settlement to the wife after the death of the husband, *R. v. Dunchurch*,
ii. pl. 668.

93. A father, in consideration of natural affection, conveys to his daughter, then under a certificate, a customary cottage, with remainder to her children; a residence on this estate will avoid the certificate, for it is not a purchase within 9 G. 1. c. 7. *R. v. Ingleson*,
ii. pl. 631.

94. *Sed qu.* for it has been doubted whether the voluntary grant of an estate conveys a settlement to a certificated person, *R. v. Warblington*,
ii. pl. 687.

95. If husband and wife be certificated, and the husband purchase an estate in the certificated parish, the widow and her children born under such certificate, will gain a settlement by residing forty days thereon, after the husband's death, *R. v. Long Wittenham*,
ii. pl. 686.

96. If a person formerly settled at *A.*, and while living on his own estate at *B.* receive a certificate from *A.*, the certificate is discharged by his subsequent residence on his estate at *B.* *R. v. Upton*, ii. pl. 688.

SEXTON.

If a church-yard lie in two parishes, the sexton may gain a settlement in the one in which he resides, although no part of the church lie within that parish, *R. v. Liverpool*,
ii. pl. 284.

SHIPS.

1. Ships are rateable to the poor in the parish to which they belong, *R. v. White*,
ii. pl. 199.

2. The servant of a waterman who sleeps on board the boat in which he plies, it seems would gain a settlement by such a residence in his master's parish for forty days, *Goring v. Moulsworth*,
ii. pl. 396.

3. So also the servant of the boatswain of the *Chatham* hulks, by working and sleeping on board the hulks, although she is moored in a different parish from that in which his master lives, *R. v. Friendsbury*,
ii. pl. 401.

4. So also if a captain's apprentice, as well as sleeping on board, be also employed to watch the goods or do other service for his master, *St. Mary Colechurch v. Ratcliffe*, ii. pl. 520.
5. So also an apprentice to the captain of a ship, who serves] the last forty days on board while the ship is lying in her harbour, gains a settlement in the parish within which the harbour lies, *R. v. Burton Bradstock*, ii. pl. 525.

SHOP.

A shop occupied separately from the house to which it belongs, is a tenement, *R. v. St. Giles*, ii. pl. 131.

SILK THROWSTER.

See POOR'S RATE, VII.

SLATE WORK.

A slate work, or, as it is improperly called, slate mine, is rateable to the poor, *R. v. Woodland*, i. pl. 212.

SOLDIERS.

See MILITIA-MEN and SOLDIERS.

SPECIAL CASE.

See SESSIONS.

SPINSTERS.

1. By 35 G. 3. c. 101. "unmarried women with child shall be considered as actually chargeable to the parish in which they reside, and may be removed to the place of their last legal settlement.
2. Although residing under certificate, *R. v. Great Yarmouth*, ii. pl. 694.
3. But a single woman living in service with her master, is not removable for this cause against the consent of both herself and her master, *R. v. Akeley*, ii. pl. 695.

STAMPS.

For the stamp duties required to be paid on indentures of apprenticeship, see SETTLEMENT BY APPRENTICESHIP.

STOCK IN TRADE.

See PERSONAL PROPERTY.

STOCK IN THE FUNDS.

Money vested in the public funds, or on government security, is not rateable to the poor under 43 Eliz. c. 2. for it is not local visible property in the parish, *R. v. Maddermarket*, i. pl. 217.

SUSPENSION.

By 35 G. 5. c. 101, "an order of removal, or vagrant pass, may, if the party be unable to travel, be suspended until it can be properly executed, and the parish to which it is made, ordered to pay the costs and charges."

T

TENEMENT.

1. By 35 G. 3. c. 101. "no poor person residing on a tenement under 10l. a-year, shall be removed till chargeable."
2. See SETTLEMENT by renting a tenement, ii. CH. IV. p. 84, &c.

THIEVES.

By 35 G. 5. c. 101: § 5. "persons who have been convicted of larceny or other felony, or who shall be reputed thieves, such persons not being able to give a satisfactory account of themselves, or of their way of living, shall be considered as actually chargeable to the parish in which they reside, and may be removed to the parish in which they are legally settled."

TIDE WAITERS.

Tide waiters and other revenue officers, are privileged from serving the office of overseer, *Raymond v. St. Botolph's*, i. pl. 11. See also *R. v. Warner*, i. pl. 16.

TITHES.

See POOR'S RATE.

TITHINGMAN.

See SETTLEMENT BY OFFICE.

TOLLS.

1. Tolls are rateable to the poor, *R. v. Wickham*, i. pl. 146.
2. The grantee of the right of navigation of the river Ouse between *Erick* and *Bedfor* is rateable to the poor of the parish of *Cardington*, in respect of the tolls arising from a sluice erected there, though he has

- self resides elsewhere, and the tolls are collected in another parish, *R. v. Cardington*, i. pl. 172.
3. See also *S. C. St. Margaret's v. St. Martin's*, i. pl. 127.
4. Where a navigation runs from *A.* to *B.* through several intervening parishes, and the tolls for the whole navigation are collected in those two parishes, they may be assessed to the poor's rate in those two parishes for the whole amount, according to the proportion collected in each, *R. v. Aire and Calder Navigation*, i. pl. 150.
5. A *large-way* and *toll-gate*, in the hamlet of *Hampton Wick*, purchased by the city of *London* by virtue of the 17 G. 3. c. 18. "An act for more effectually completing the navigation of THE THAMES, and empowering the city to levy tolls and duties towards the charges of the navigation, are rateable towards the relief of the poor in that hamlet for such part of the tolls as become due there, notwithstanding the tolls are collected in another parish, *R. v. Mayor of London*, i. pl. 196.
6. Where by a navigation act the proprietor was entitled to a toll of four shillings *per ton* for goods carried from *A.* to *B.*, or from *B.* to *A.*, and to a proportionable sum for any less distance, and was also enabled to appoint any place of collection, it was held, that the tolls for goods carried the whole voyage from *A.* to *B.*, are rateable in *B.*, though in fact they are collected in a parish between *A.* and *B.*, because the tolls become due where the voyage is completed, *R. v. Page*, i. pl. 97.
7. So where a navigation act empowered the proprietors to take so much *per mile per ton* for all goods carried along the canal, it was held that they were rateable to the poor for the tolls in the different parishes where the tolls became due, that is, *where the respective voyages ended*; though, for their own convenience, they were authorized to collect the tolls where they pleased, and did in fact collect them in other parishes, *R. v. The Staffordshire Navigation*, i. pl. 99.
8. But where by an act of parliament the commissioners of a navigation were authorized to take certain tolls, the whole of which were directed to be applied to public purposes, it was held that the tolls were not rateable to the poor, *R. v. Salter's Sluice Navigation*, i. pl. 198.
9. Toll-gate-keepers on turnpike-roads shall not be removed from the toll-houses, or gain a settlement in the parish where situated, 15 G. 3. c. 84.
10. Nor gain a settlement by renting the tolls and residing in the toll-house, *Ibid.*

11. But if the toll-gatherer reside in the toll-house as servant to the collector, he may thereby gain a settlement, *R. v. Denbigh*, ii. pl. 148.

TOWNSHIP.

See VILL.

TRADES.

1. By 5 Eliz. c. 4. § 51. "no person shall exercise any art, mystery, or manual occupation, used at the time of passing the act, in *England or Wales*, except he shall have been brought up therein seven years at the least as an apprentice; nor set any person on work in such art, mystery, or manual occupation, except such person shall have been apprentice as aforesaid."
- Repealed by 54 G. 5. c. 96.*
2. By 15 Car. 2. c. 15. § 2. certain trades excepted from the restraints of 5 Eliz. c. 4.
3. So by 6 & 7 Will. 3. c. 17. § 12. "if any apprentice shall discover and convict two or more coiners, he may set up a trade, although the said apprentice has not served the full term of seven years."
4. So by 5 G. 3. c. 8. all officers, marines, soldiers, &c., may exercise trades without having served apprenticeships.
5. A *husbandman* who has been a soldier is not a trader so as to be irremovable under this statute, *R. v. Gwenop*, ii. pl. 692.
6. Every man may exercise a trade, such as baker, brewer, tallow chandler, &c., for his own use or for the use of his family, but he cannot take an apprentice, *Case of City of London*, 8 Co. 129.
7. A person who has served six years as an apprentice, and worked as a journeyman in the same trade above that time, is not within the restraint of the statute, *R. v. Moor*, 3 Keb. 400.
8. The trades of a *fruiterer*, of a *pippin-monger*, of a *gardener*, are not within the statute, *R. v. Plume*, 1 Vent. 326.
9. A merchant dealing to Turkey in the exportation of woollens, employed clothiers in his own service, who had served regular apprenticeships, to manufacture the cloths he exported; and held, that as he had not served an apprenticeship, he could not thus exercise the trade of a clothier, *Hobbes v. Young*, 2 Salk. 610.
10. Though the statute mentions only *England and Wales*, yet if the apprenticeship was served beyond sea it is sufficient, *R. v. Fox*, 1 Salk. 67.
11. And as the restraints of this statute have sometimes been held oppressive, evidence of having followed a trade for seven years, without any proof of having

- been bound apprentice, has been allowed, *R. v. Maddox*, 2 Salk. 615.
12. It has therefore been held, that a wife living in the shop with her husband for seven years is equivalent in this respect to an apprenticeship; but evidence that the trader has himself followed the business for seven years has been disallowed, *R. v. Morrice*, 1 Bar. K. B. 367.
13. But this latter opinion is not law; for on a consultation with the twelve judges, they all agreed that exercising a trade seven years, without any prosecution with effect, is a sufficient qualification to constitute it without being liable to the penalties of the 5 Eliz. c. 4. *Waller v. Holton*, 2 Blac. Rep. 235.
14. Serving an apprenticeship to a trade not mentioned in the statute is sufficient, *R. v. Lister*, Str. 788.
15. Although it was not a trade known at the time of passing the act, *R. v. Munro*, 1 Bar. K. B. 277.
16. If one of two partners in a trade has served an apprenticeship, the other is thereby protected from the restraints and penalties of the statutes, *Raymond v. Chace*, 1 Burr. 2.
17. A man may exercise as many trades as he has worked at, or served to, for seven years, *French v. Adams*, 2 Wils. 168.
18. The quarter sessions may proceed by information on the statute 5 Eliz. c. 4. for exercising a trade, not having served an apprenticeship for seven years, *Farren v. Williams*, Cowp. 369.
19. A bye-law in restraint of trade is void, *R. v. Coopers' Company of Newcastle*, 7 T. R. 345.
5. Provisions heretofore made, relative to vagrants, shall be repealed, except as to offences committed before the passing of this act, 5 G. 4. c. 83. § 1.
6. Provisions of 52 G. 3. c. 45., as give power of passing convicts on discharge from prison, repealed, 5 G. 4. c. 83. § 2.
7. Persons committing certain offences, (in this section specified,) how to be punished, 5 G. 4. c. 83. § 3.
8. Persons committing certain offences, (in this section specified,) to be deemed rogues and vagabonds, 5 G. 4. c. 83. § 4.
9. Who shall be deemed incorrigible rogues, 5 G. 4. c. 83. § 5.
10. Any person may apprehend offenders. Penalty on constables, &c., neglecting their duty, 5 G. 4. c. 83. § 6.
11. Justices to examine persons apprehended, and if matter be proved, to commit them, 5 G. 4. c. 83. § 7.
12. All vagrants to be searched, and trunks, bundles, &c., to be inspected. Effects found upon vagrants to be sold, and applied towards the expenses of maintaining such offenders, 5 G. 4. c. 83. § 8.
13. Justices may bind persons by recognizance to prosecute vagrants at sessions. Power of sessions to order payment of expenses to prosecutors and witnesses, 5 G. 4. c. 83. § 9.
14. Power of sessions to detain, and keep to hard labour, and punish by whipping, rogues and vagabonds, and incorrigible rogues, 5 G. 4. c. 83. § 10.
15. Penalty on officers neglecting their duties, &c., 5 G. 4. c. 83. § 11.
16. On conviction of officers, &c., (under 53 G. 3. c. 55.) justices to make order for payment of expenses of prosecution, 5 G. 4. c. 83. § 12.
17. Lodging-houses, &c. suspected to conceal vagrants, may be searched, and suspected persons brought before a justice, 5 G. 4. c. 83. § 13.
18. Persons aggrieved may appeal to the next sessions, 5 G. 4. c. 83. § 14.
19. Visiting justices of gaols, &c., empowered to grant certificates, for enabling persons discharged from prison to receive alms in their route, 5 G. 4. c. 83. § 15. Justices not to grant certificates, enabling persons to ask relief on route, except to soldiers and sailors, 43 G. 3. c. 61. Other persons asking alms, to be deemed rogues and vagabonds, 5 G. 4. c. 83. § 16.
20. Form of conviction. — Conviction to be transmitted to the sessions, and a copy thereof to be evidence, 5 G. 4. c. 83. § 17.
21. Justices, &c., to have treble costs, if judgment be in their favour, 5 G. 4. c. 83. § 18.

UNDERWOOD.

See POOR'S RATE, VII.

V.

VAGRANTS.

1. Passing of vagrants to their place of settlement to be discontinued. Justices not to grant any passes either to vagrants or others, 1 & 2 G. 4. c. 64. § 1.
2. Present rewards for apprehending vagrants abolished, 1 & 2 G. 4. c. 64. § 2.
3. Power of justices to order a certain sum to be paid for the apprehension of vagrants, to be paid by the overseers of the parish in which the act of vagrancy is committed. 1 & 2 G. 4. c. 64. § 3.
4. This act not to alter the 59 G. 3. c. 12. nor to affect orders for the removal of poor persons, not vagrants, 1 & 2 G. 4. c. 64. § 8.

22. Limitation of actions, 5 G. 4. c. 85. § 19.
23. Persons convicted under this act, to be chargeable to the parish in which they shall reside, 5 G. 4. c. 85. § 20.
24. Persons committing offences under former acts, to be punished under this act, 5 G. 4. c. 85. § 21.
25. Not to extend to repeal any act in force in Scotland or Ireland, relative to the removal of the poor, &c., 5 G. 4. c. 85. § 22.
26. A common soldier billeted in a distant parish from that in which his family resides, is not a vagrant as a person who has run away from his family, although he is able and refuse to maintain them, and they, in consequence of being thus abandoned, become chargeable to the parish. *The Soldier's case*, i. pl. 456.
27. A person committed by one justice of the peace under the 17 G. 2. c. 5. § 7. cannot be bailed by another justice; for such commitment is in execution, *R. v. Brooke*, 2. T. R. 190.
28. And being a commitment in execution, it must be founded on a legal conviction, *R. v. Rhodes*, 4. T. R. 220.
29. The justices cannot send a person at her own request by a pass to the place of her settlement, unless she is in a state of vagrancy; for if she is likely to be chargeable, she must be removed by an order of two justices, *R. v. Welchman*, ii. pl. 871.
30. A vagrant pass, unappealed from, is not conclusive in like manner as an order of two justices, *R. v. Stangfield*, ii. pl. 872.
31. For a pass only prevents vagrancy, and does not, like an order of removal, adjudge the place of settlement, and therefore, as it cannot be appealed against, it is not conclusive on the parish to which the vagrant is sent as to his settlement, *R. v. Upmarden*, ii. pl. 875.
32. And therefore the parish to which a vagrant is sent, cannot appeal against the pass on the ground that the pauper is not settled in the parish, but must remove him by an original order of two justices, *R. v. Dingwood*, ii. pl. 874.
33. But although it is settled, that an appeal does not lie by a parish against a vagrant pass, yet it is not decided that it will not lie in the case of a foreigner taken in an act of vagrancy, and sent, upon a false examination, to a parish to which he does not belong, *St. Lawrence Jewry v. Edgmore*, ii. pl. 875.
34. Besides the vagrant pass authorized by the act, it was the practice of some justices to grant other passes, merely to enable the party to beg without incurring the penalties of the vagrant act.

VESTRY.

1. By 58 G. 3. c. 69. "an act for the regulation of parish vestries," three days' notice is to be given of holding a vestry, by publication in the church, and affixing on the church door.
2. Chairman of vestries to be appointed, and have the casting vote, and minutes of proceedings to be entered in a book and signed, 58 G. 3. c. 69. § 2.
3. Manner of voting in vestries, 58 G. 3. c. 69. § 5.
4. Inhabitants coming into a parish since the last rate may vote, 58 G. 3. c. 69. § 4.
5. Inhabitants refusing payment of rates to be excluded from vestries, 58 G. 3. c. 69. § 5.
6. Inhabitants in vestry shall direct how parish books and papers shall be preserved, 58 G. 3. c. 69. § 6.
7. Penalty not exceeding 50s. nor less than 40s. for retaining or injuring parish books &c. 58 G. 3. c. 69. § 6.
8. Provisions in this act in relation to parishes extended to townships, &c., and manner of giving notices of vestries and meetings in special cases, 58 G. 3. c. 69. § 7.
9. Not to alter the time for holding vestries especially directed, nor to affect special vestries, 58 G. 3. c. 69. § 8.
10. Not to extend to London or Southwark, 58 G. 3. c. 69. § 9.
11. Parishes empowered to establish select vestries for the concerns of the poor, 59 G. 3. c. 12. § 1.
12. Constitution of select vestries; members elected to be appointed by a justice; vacancies to be supplied; continuance of select vestries; power of renewal; meetings and duties of select vestries; overseers (except in cases of emergency) to give no other relief than such as shall be ordered by the select vestry, 59 G. 3. c. 12. § 1.
13. Every order for relief in parishes not having a select vestry, shall be made by two or more justices, 59 G. 3. c. 12. § 3.
14. Justices may appoint non-resident overseers, 59 G. 3. c. 12. § 6.
15. Assistant overseer may be appointed and security taken, 59 G. 3. c. 12. § 7.
16. Persons rated to the poor, though not parishioners, may vote in vestry according to the value of the premises rated, 59 G. 3. c. 85. § 1.
17. Clerk or agent of corporation, &c. may vote in vestry according to the value of the premises rated, 59 G. 3. c. 85. § 2.
18. Non-payment of rates to disqualify from being present or voting in vestry, 59 G. 3. c. 85. § 3.

19. Justices empowered to order relief in certain cases for a limited time,
59 G.3. c.12. §2.
20. One justice may order temporary relief, in cases of urgent necessity,
59 G.3. c.12. §2.
21. Minutes to be kept of the proceedings of select vestries; minutes of select vestries and reports of their proceedings to be laid before the inhabitants in general vestry,
59 G.3. c.12. §3.
22. Notice to be given of vestries for the establishment and election of members, and for receiving reports of select vestries,
59 G.3. c.12. §4.
23. A select vestry for the management of the parish affairs existing by ancient custom, cannot elect another select vestry for the management of the poor within the 59 G.3. c.12. *R. v. Woodman*,
i. pl. 390.
24. In the parish of *W.* the poor's rate according to an ancient custom, had always been made without respect to the value of property in the parish, but according to the supposed ability of the party charged: held that persons so rated were not rated in respect of any annual rent, profit, or value, within the meaning of the 58 G.3. c.69. §5. and therefore were not entitled to more than one vote at vestry meetings, although rated upon more than 50*l.* *Nightingale v. Marshall*,
i. pl. 393.

VILL.

1. By 13 & 14 Car. 2. c.12. separate overseers may be appointed for the several *vills* of a parish, if the parish is so large that it cannot reap the benefit of the 45 Eliz. c.2.
2. A *village* that previous to the passing 43 Eliz. c.2., had the reputation of being a *parish*, shall maintain its own poor, *Hilton v. Pawle*,
i. pl. 43.
3. Although it appears to have been originally a *vill* to the adjacent parish, if long before, and at the time, and after the passing of the 43 Eliz. c.2., it had the reputation of being a *parish*, *Nicholas v. Walker*,
i. pl. 44.
4. But not if it has never been reputed a *village*, and is extra-parochial, especially if it be returned to a *mandamus*, that it is not a *vill*, *R. v. Welbeck*,
i. pl. 50.
5. A *vill* is commensurate to a *constablewick*, and therefore if a place has never had a constable it is not a *vill*, *R. v. Rufford*,
i. pl. 47.
6. But a *vill* having a chapel of its own before, and making rates since the statute,

- will not make it a separate parish, *Rudd v. Foster*,
i. pl. 46.
7. But where a *vill* has had for 60 or 70 years, separate overseers, and has maintained its own poor separately from the parish at large, it is still entitled to the same privilege, *R. v. Leigh*,
i. pl. 63.
8. *Sed vide*, *R. v. Newell*,
i. pl. 64.
9. But in an application for a *mandamus* for the purpose of appointing overseers, it must be expressly stated that the place is a reputed *vill*, *R. v. Bedfordshire*,
i. pl. 58.
10. The scites and areas of ancient cathedrals, colleges, and inns of court, not being *vills* either legally or by reputation, are not liable to the appointment of overseers, *R. v. Peterborough*,
i. pl. 59.
11. It is the province of the sessions to judge, whether a place is, or is not a *vill*, *R. v. Ronton Abbey*,
i. pl. 62.
12. A place consisting of one house only, is not a *vill*, *Dolling v. Stokelane*,
i. pl. 46.
13. A place consisting of a capital messuage, and of two small ancient cottages, and of one other small cottage lately built, all which were let along with the capital messuage, and a farm thereto belonging, has been adjudged a village, *R. v. Skewton*,
i. pl. 55.
14. An extra-parochial place, consisting of two houses, and about 500 acres of land only, belonging to and in the occupation of different persons, and of the value of about 300*l.* pounds a year, does not amount to the notion of a town or village; for Lord Coke's definition of a *vill* "*ex pluribus mansionibus vicinata*," must mean more than two houses, *R. v. Denham*,
i. pl. 45.
15. An extra-parochial place, once consisting of a capital mansion-house, and three keepers' lodges in the park adjoining, the park being afterwards converted into five farms, but each a dwelling-house, including the old lodges, held not to be a *vill* or town, *R. v. Grafton*,
i. pl. 49.
16. But an extra-parochial place may be a *vill*, although it only consists of two houses, *R. v. Elyford*,
i. pl. 60.
17. A *hamlet* consisting of one house only and between 300 and 400 acres of land is not a *vill*, and therefore cannot have separate overseers, but shall be contributory to the parish in which it lies, *R. v. Tamworth*,
i. pl. 51.
18. But a *hamlet* and a *vill* are synonymous terms, *R. v. Morris*,
i. pl. 61.

VOLUNTARY GRANT.

1. The question whether the voluntary grant of an estate confers a settlement on

certificated man, seems unsettled, *R. v. Warlington*, ii. pl. 687.
 1. But it certainly confers a settlement on an uncertificated person, *R. v. Marwood*, ii. pl. 615.

3. Therefore where a father was possessed of a cottage and land worth 50*l.* and by a feoffment, in consideration of natural love and affection, and of 10*l.* paid to him by his son, granted to him the said cottage and land in fee, it was held that the son's residence thereon for 40 days gave him a settlement in the parish, *R. v. Upton*, ii. pl. 657.

4. So where *Speedey* and his wife came with a certificate to *Astwich*, in which parish was a customary cottage, which the father of the wife had, 50 years before, conveyed to his daughter, in consideration of natural love and affection, for life, with reversion in fee to her daughter, and *Speedey* and his family lived uninterruptedly on the estate for 16 years, when he purchased the reversion, and lived on it nine years afterwards, it was held a voluntary grant, *R. v. Ingleton*, ii. pl. 621.

5. So if an aunt to the wife of a pauper, a certificated man, convey a moiety of a customary estate, in consideration of natural love and affection to her niece and husband for their lives, with remainder to their son in fee, and the tenants for life, in consideration of 10*l.*, convey their moiety to their son, the remainder-man in fee, who lives with them in the house, it is a voluntary grant, and not a purchase within 9 G. 1. c. 7. § 5. But whether this would give a settlement is undecided, for it is the case of a certificated person, and was given up under an idea that it was governed by *R. v. Marwood*.
R. v. Ingleton, ii. pl. 621.

W.

WARDEN.

Serving the office of warden of a borough will gain a settlement, *St. Mary v. St. Lawrence, Reading*, ii. pl. 251.

WARRANT.

1. A warrant of bastardy not being returnable at any particular time, continues in force until it is fully executed and obeyed, even for seven years, if the magistrate live so long, and therefore if the putative father elect to give sureties to indemnify the parish, and only one of them signs the bond, he may be retaken on the same warrant, *Dickenson v. Brown*, i. pl. 569.

2. So a judge's warrant on a certificate of indictment found, to bring in the party to plead at the next sessions, may be executed after the sessions, for it means the next sessions after the arrest, *Mayhew v. Parker*, 8 T. R. 110.
 3. When the order is taken by two justices under the 18 Eliz. c. 5. one justice may, by his warrant, commit the putative father, *Smith's case*, i. pl. 615.

WATERING-PLACES.

1. A settlement may be gained by service at a watering-place, as *Scarborough, Exmouth, &c.* under a hiring for a year, *Alton v. Elvetham*, ii. pl. 400.
 2. Therefore where a groom who was hired at *Barrow's Brook* to look after the horses of Lord Portmore, whose residence was at *Weybridge*, but whose running horses were kept at *Barrow's Brook*, went to different places with the horses during a service of several years, and at last went with them to *East Ilsey*, a watering-place, for the space of 10 months, where he was discharged, it was held that he gained a settlement in *East Ilsey*, although his master had no house nor any estate in the parish, *R. v. East Ilsey*, ii. pl. 402.
 3. So where a clergyman, who resided at *Bath Easton*, hired a servant, who went with his master and his family on an excursion to *Exmouth*, for the purpose of sea-bathing, where they lived in a lodging-house at so much a week for the space of 10 weeks, after which he was discharged at *Exmouth* by his master, who returned home with his family to *Bath Easton*, it was held that the servant gained a settlement in *Exmouth*, *R. v. Bath Easton*, ii. pl. 403.
 4. But if a servant, born under a certificate at *Elvetham*, go with his master to *Scarborough*, or any other watering-place, and the servant's year expires after 40 days' residence there, without his quitting the service, but on the servant applying for a new agreement, his master tells him, "it will be time enough when we return home," and afterwards, on their arrival at home, they make a new agreement at advanced wages, under which the servant serves a year, he does not gain a settlement either at *Elvetham* or *Scarborough*; for he did not serve the last 40 days under the last hiring at *Scarborough*; and as he was certificated, the statute 9 & 10 Will. 3. c. 11. prevents his settlement at *Elvetham*; and of course his settlement is in the parish from which he was certificated, *Alton v. Elvetham*, ii. pl. 400.

WAY-LEAVE.

1. The occupier of land on which a way-leave is erected for the purpose of carrying coals, is rateable for the same to the poor, *R. v. Bell*, i. pl. 209.
2. But a person is not rateable for the mere right of using such a way-leave, *R. v. Jolliffe*, i. pl. 187.

WIDOWER.

1. A widower may gain a settlement by hiring and service, although he has children living, provided such children have gained settlements in their own right, *Anthony v. Cardigan*, ii. pl. 257.
2. A married man without children, who becomes a widower between the time of hiring and entering on the service, provided the year commences at that time, may gain a settlement by such hiring and service, *R. v. Bank Newton*, ii. pl. 259.
3. But a widower having a son who has no settlement of his own, cannot gain a settlement by hiring and service, *R. v. New Forest*, ii. pl. 263.

WIDOW.

1. A widow by residence during her quarantine, gains a settlement for herself and children who are not emancipated, although they do not reside with her during the quarantine, by reason of an occasional separation, *R. v. Long Wittenham*, ii. pl. 55.
2. A widow may gain a settlement by hiring and service after the death of her husband and his children, *R. v. Hensingham*, ii. pl. 260.
3. The widow of a man who dies seized of an estate, gains a settlement by residing thereon 40 days in right of her dower; but she cannot, by such estate, confer a settlement on a second husband until dower be assigned, *R. v. Painswick*, ii. pl. 637.

WITNESS.

1. Inhabitants rated or liable to be rated, &c. are competent witnesses on behalf of or against their parishes, 54 G. 5. c. 170. § 9.
2. A person who has been convicted of grand larceny cannot be examined as a witness on an appeal against an order of removal, while under sentence of imprisonment; but the fact of his conviction can only be proved by the production of the record, *R. v. Castell Carewinn*, ii. pl. 1084.

WOOL-COMBERS.

1. By 35 G. 3. c. 124. "two justices may enquire into the settlement of wool-combers."
2. Woolcombers exercising trades shall not be removable until chargeable. *Ibid.*

WORKHOUSE.

1. By 43 Eliz. c. 2. § 5. "the churchwardens and overseers, by leave of the lord of the manor, of which any waste within the parish shall be parcel, and upon agreement made with him in writing, under hand and seal, or with the like leave, by an order of sessions, may build on such waste, at the general charge of the parish, convenient houses of dwelling for the impotent poor."
2. By 9 G. 1. c. 7. § 4. "the churchwardens and overseers, with the consent of the majority of the parishioners or inhabitants in vestry, for that purpose assembled, upon usual notice thereof first given, may purchase or hire any house or houses in the parish, and contract with any person for the maintaining of their poor."
3. By 9 G. 1. c. 7. § 4. "if the parish shall be too small to purchase or hire such house or houses for the poor of their own parish, two or more such parishes, with the consent of the inhabitants as aforesaid, and with the approbation of a justice, may unite in the purchasing or hiring of such house or houses, and in contracting for the maintenance of their poor."
4. By 9 G. 1. c. 7. § 4. "where a workhouse is purchased or hired, the parish officers, with the consent of the majority of the parishioners in vestry assembled, may contract with the parish officers of any other parish for maintaining their poor."
5. But by 45 G. 5. c. 54. "No contract, described in the above clause of 9 G. 1. c. 7. § 4. shall be valid, binding, or effectual, unless the person or persons with whom the same shall be entered into respectively shall be resident within the parish contracting, or within the parish in which the poor are to be maintained, or within one of the parishes where two or more are united, or within the parish in which the poor are maintained; nor unless one of more responsible householder residing in one of the parishes, and approved of by the overseers shall, before the contract is signed, by their joint and several bond, with a penalty in one half of the assessment, give security for the due performance of the contract; nor unless such contract shall be approved of and signed by

two justices of the district in which one of the parishes is situated; and all other contracts shall be void: The contract to cease on the removal of the contractor from the parish; but such removal not to vacate the security: But this act is not to extend to particular parish acts, or to antecedent contracts."

6. It is competent to the inhabitants and officers of two or more parishes uniting under the 9 G. 1. c. 7. §. 4. to purchase workhouses for the keeping and employing of the poor, to make such purchases in any other parish; for where two or more parishes unite, the legislature has not required that the building should be raised in either of the confederate parishes; and when once the joint purchase is made, wherever it may be, it becomes a part of the local system of each contracting parish, *R. v. St. Peter and St. Paul*,

i. pl. 485.

7. But single parishes can only contract for these buildings within their own limits,

Id. ibid. text.

8. And *quare*, when the workhouse is in a third parish, whether it is necessary to give the paupers sent there certificates?

Id. ibid.

9. Under the 9 G. 1. c. 7. §. 4. it is not necessary that all the churchwardens and overseers should concur; for the contract of a majority of them will bind the rest, *R. v. Beeston*,

i. pl. 475.

10. But by 22 G. 3. c. 83. so much of the said statute 9 G. 1. c. 7. §. 4. as respects the maintaining or hiring out the labour of the poor by contract in any parish, township, or place, which shall adopt the provisions of this act, shall be repealed.

11. By 50 G. 3. c. 49. §. 1. "any justice of peace, or any physician, surgeon, or apothecary, authorised by warrant of a justice of the peace, or the officiating clergyman of the parish, duly authorised as aforesaid, may at all times in the day-time, visit any parish workhouse or house provided for the maintenance of the poor, within the jurisdiction of the justices granting the authority, and examine into the state and condition of the poor people therein, and if there be cause for complaint, may certify the same to the next quarter sessions, and if the complaint be founded, the sessions shall order the cause of it to be removed.

12. By 50 G. 3. c. 49. §. 2. "if upon such visitation, the poor in such workhouse shall appear to be afflicted with any contagious disease, or be in want of immediate medical or other assistance, or of sufficient and proper food, or require separation or removal from the other poor in such work-

house, any one justice on his own view may certify the same to any other justice, or if on the view of the said persons authorized as aforesaid, they may apply to two justices, and such two justices respectively shall order relief."

13. "But this act is not to extend to incorporated districts."

14. By 36 G. 3. c. 25. "justices may order, in certain cases, relief to be afforded to poor persons at their own homes, although such poor person shall refuse to be lodged and maintained in the workhouse pursuant to the statute 9 G. 1. c. 7. §. 4. which orders poor persons who refuse to go into the workhouse, to be put out of the books of relief.

15. So also by 36 G. 3. c. 35. "they may order such relief notwithstanding any contract made with any person for maintaining the poor in the workhouse."

16. "But this act shall not extend to incorporated districts.

17. Power for overseers, &c., to build or enlarge workhouses, 59 G. 3. c. 12. §. 9.

18. Insufficient workhouses may be sold, 59 G. 3. c. 12. §. 10.

19. When no workhouses, &c., can be procured in the parish, adjoining parish may be resorted to, 59 G. 3. c. 12. §. 10.

20. Which building, as to settlement, shall be in the parish so purchasing or hiring,

59 G. 3. c. 12. §. 11.

21. Parishes may provide land for the employment of the poor not exceeding 20 acres,

59 G. 3. c. 12. §. 12.

22. And may let portions of land to poor inhabitants,

59 G. 3. c. 12. §. 13.

23. Limiting the amount to be raised for building and the purchase of lands, &c.,

59 G. 3. c. 12. §. 14.

24. Power to raise further sums by loans, or by sale of annuities, and further rates charged with loans and annuities,

59 G. 3. c. 12. §. 15.

25. No greater rate than 1s. in the pound shall be charged on future rates, unless with consent of two thirds in value of proprietors of premises.

59 G. 3. c. 12. §. 16.

26. Churchwardens and overseers may take and sue as bodies corporate,

59 G. 3. c. 12. §. 17.

27. Justices empowered in certain cases to deliver the possession of parish houses to overseers; mode of proceeding,

59 G. 3. c. 12. §. 24.

28. Justices empowered to deliver possession of land appropriated for the poor,

59 G. 3. c. 12. §. 25.

29. Power given to guardians to sell poor-houses and lands,

1 & 2 G. 4. c. 56. §. 1.

30. Application of money to arise by such sale,

1 & 2 G. 4. c. 56. §. 2.

1. The first part of the paper is devoted to a discussion of the

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ADDENDA.

To follow i. pl. 255.

Mitchell v. Fordham, *H. T. 7 & 8 G. 4. 6 B. & C. 274.* — Replevin for seizing plaintiff's goods and chattels. Avowry by defendant, as overseer of the poor of the parish of *Kelshall*, in the county of *Hertford*, stating, that the rector of the said parish, before the passing of an act of parliament hereinafter mentioned, was entitled to certain great and small tithes arising, &c., in that parish. That by an act of parliament passed in the 35 G 3. for inclosing lands in the parish of *K.*, it was enacted, that a certain yearly corn-rent, *free from all taxes and other deductions whatsoever, except the land-tax*, should be issuing and payable from and out of the lands and grounds thereby intended to be divided and allotted, and the old inclosures (except as therein excepted), and should be payable by the respective proprietors of the said lands and grounds, in the proportions, and at the times and place in the act mentioned; which said yearly rent should be in lieu and satisfaction of, and full compensation for, all the great and small tithes, moduses, compositions, and other dues and payments whatsoever due or payable to the rector of the said rectory for the time being. Averment that the plaintiff was assessed to the poor in the sum of 12*l.*, in respect of the corn-rent by him received in lieu of tithes; and because that sum remained unpaid, defendant, as overseer of the poor of *K.*, distrained plaintiff's goods. Demurrer and joinder.

— *ABBOTT C. J.* Inasmuch as tithes are liable to a contributory payment for the support of the poor, there can be no doubt that if, by an act of parliament, a money payment is substituted for tithes, and no express exemption given, it will be liable to the same burthen as the tithes themselves. But where a bargain is made, as in the case of inclosures, the amount payable to the rector will vary according to the existence or non-existence of any agreement as to exemption from taxes and other burthens. The words of this act of parliament, as set out in the avowry are, that "the rent shall be paid free from all taxes and other deductions whatsoever, except the land-tax; and the question turns upon the meaning of the words, "all taxes and other deductions." The rector says, they include payments made for the support of the poor. The parish say, that the word *taxes* does not mean *rates*. It has been already determined that "parochial tax" meant "poor rate." But is there any thing absurd in speaking of "poor's tax," instead of "poor's rate?" I take the former expression to be equally appropriate; it means a sum raised by division upon many: and the very expression used in the 43 *Eliz.* is, that "a fund should be raised by *taxation*." If the money is raised by taxation it is a tax. I am, therefore, of opinion that the exemption applies to this burthen; and, indeed, it would be difficult to find any other burthen from which the rector would be exempted by the words of the act of parliament. — Judgment for the plaintiff.

By an inclosure act, it was provided that a certain corn-rent, "free from all taxes and deductions whatsoever, except the land-tax," should be issuing out of the lands to be enclosed, and other lands in the parish, and to be paid to the rector in lieu of all great and small tithes, &c. Held, that this corn-rent was not liable to be assessed to the relief of the poor.

To follow i. pl. 255.

The owner and occupier of coal-mines is rateable to the poor at the sum for which the mine would let, subject to outgoing. The lessee of coal-mines is rateable for the amount of royalty or rent which he pays; and in neither case is any allowance to be made for money expended in rendering the mines productive.

Rez v. Attwood and Others, H. T. 7 & 8 G. 4. 6 B. & C. 277.— On the 29th day of March 1825, the churchwardens and overseers of the parish of Rowley Regis, in the county of Stafford, made a rate for the relief of the poor, in which *J. A.* was assessed as owner and occupier, and *T. D.*, *J. J.*, and *J. F.* and *J. P.* were assessed as lessees and occupiers of certain coal-mines then at work. Upon appeal to the Sessions, the rate was confirmed, subject, &c. The appellant, *J. A.*, was the proprietor and occupier of the coal-mine upon which the rate upon him was made, and had expended upwards of 10,000*l.* in planting the mine and setting it to work. The mine had been at work one year and a quarter. The value of the whole of the coals which had then been raised from the mine did not exceed 5000*l.* The full value of the annual produce of the mine in question, after deducting the current expenses of working the same, amounted to the sum of 428*l.* 9*s.* Upon that amount the appellant was rated. The appellant, *T. D.*, had been, for five months prior to the said 29th day of March 1825, lessee of the coal-mine upon which the rate upon him was made, and which is situate in the said parish of *R. R.*; and during the five months that he had been lessee he had paid 785*l.* 14*s.* in royalties for coals raised; he had also expended, in the purchase of the lease and setting the mines to work, 5020*l.* During the five months that he had occupied the mine, he had raised coals to the amount of 3825*l.* 2*s.* 8*d.* The appellant, *T. D.*, was rated upon the sum paid for royalties the sum of 785*l.* 14*s.*, being considered by the respondents as the annual value of the royalties paid by him. The appellants, *J. J.* and *J. F.*, were lessees of the coal-mines upon which the rate upon them was made, and which are situate in the said parish of *R. R.* Sir *H. St. P.*, the owner and lessor of the mines, sunk the pits, and made preparations requisite for working the mines, and then let them to the appellants, *J. J.* and *J. F.*, at a certain fixed royalty, not a specific proportion of the amount of sales; 492*l.* 12*s.* 8*d.* was the amount of royalties paid to the lessor during the last year. The lessees had expended 600*l.* in permanent erections on these mines. The appellants, *J. J.* and *J. F.*, were rated upon the supposed amount of the annual sums paid for royalties. The appellant, *J. P.*, had been eight years lessee of the mine, upon which the rate upon him was made, and which is situated in the said parish of *R. R.*, and had expended 2500*l.* in planting the mine, and setting it to work. During the last year he had raised coals to the value of 2500*l.*, and during that period had paid 585*l.* in royalties, and was rated upon the supposed amount of the annual sums paid for royalties. The questions for the consideration of the Court are, first, Whether under all the circumstances of this case, *J. A.* was properly rated at the sum of 438*l.* 9*s.* in respect of the said coal-mine, such sum being the full value of the annual produce of the mine, after deducting the current expenses of working the same? And, secondly, whether the said *J. D.*, *J. J.*, and *J. F.*, and *J. P.* were rateable in respect of their occupation of the said coal-mines to the full amount of the sums paid for royalties upon the coals raised from such mines? — ABBOTT C. J. We are all of opinion that the owner and occupier of a coal-mine should be

ADDENDA.

rated at such sum as it would let for, and no more. As to the other points, the first was, that the rate should not be imposed upon the coal produced, because that was part of the realty. It is the first time that such a proposition has ever been submitted, although many coal-mines, in various parts of the country, have constantly been rated, and the argument in support of it is wholly untenable. The legislature has expressly made coal-mines rateable, and they must be rated for what they produce, viz. the coals. Slate-quarries and brick-earth are also exhausted in a few years; but, nevertheless, the rate is always imposed upon that which is produced. The other argument was, that the rate could not be imposed until the expense of planting the mine had been recouped. But I cannot discover any distinction between expenses incurred in bringing a mine to a productive state, and in building a house. The attempt to distinguish them is perfectly novel; and if a house is to be rated as soon as built and occupied, it must follow that a coal-mine is rateable as soon as it is set at work and produces coals, although it may happen that the expense of sinking it may never be recovered. If the tenant of a mine expends money in making it more productive, that is the same as expending money in improving a farm or a house, in which cases the tenant is rateable for the improved value. — Order of Sessions amended as to the rate upon *J. A.*, and confirmed as to the residue of the rate.

To follow ii. pl. 266.

Res v. Holsworthy, H. T. 7 & 8 G. 4. 6 B. & C. 283. — Upon an appeal against an order of two justices, whereby *F. H.*, his wife and child were removed from *T.* to *H.* the Sessions confirmed the order, subject, &c. In the month of *May* 1819, the pauper being a single man, was enrolled as a substitute in the *S. D.* militia, as a private, to serve for the space of five years, and in *June* 1823, while he was still a member of the corps, being at *P.* he offered himself as a recruit to one *G. M.*, a private in the fifteenth regiment of infantry, who paid him a shilling for enlisting money, and took him to a serjeant of the regiment, and he was after inspection by the surgeon sworn in before the mayor of *P.* as a recruit in that regiment, for unlimited service. At the time of receiving the shilling from *G. M.*, he informed him that he belonged to the *S. D.* militia, and was by him told not to mention it. He did not mention it either to the serjeant, the surgeon, or the commanding officer of the regiment. For this offence he was subsequently tried, convicted, and imprisoned. In *February* 1823, he being still a single man, hired himself for a year to one *P.*, in the parish of *H.*, and performed a year's service in that parish, under that hiring. The question for the opinion of the Court was, whether by such hiring he gained any settlement in that parish. — *BAILEY J.* I think this case does not admit of any doubt. It is not necessary to say whether a militia-man may or may not gain a settlement by serving under a yearly hiring for a whole year, if at the time of making the contract he communicates to the party with whom he is contracting, that he is in the militia, and therefore liable to be called out during the year. If the master chooses to engage the servant, subject to the risk of his being called upon to perform duty as a militia-man during the year, I do not see that there is any

A. being enrolled as a substitute in the militia hired himself for a year, and performed a year's service under that contract: Held, that as it did not appear that the pauper at the time of hiring informed the master that he was a militia-man, no settlement was gained by serving a year under such contract.

thing illegal in such a bargain. It may be considered a conditional hiring, and, if during the year the militia be not called out, a settlement may, perhaps, be gained by serving under it. But what is the contract of hiring in this case? The contract is one by which the master stipulates to have, and the pauper stipulates to give, his services for one whole year. There is no qualification or condition whatever in the contract, and if there were any, it ought to have been stated in the case, and cannot be inferred. I do not presume fraud, for the non-communication of the fact of the pauper's being in the militia, may have arisen from his considering it wholly immaterial, from omission, or from other circumstances. Without, therefore, breaking in upon any case, in which it has been decided that a militia-man, who in his contract of hiring stipulates for the time he may be called upon to perform his duty in the militia, may gain a settlement by serving for a whole year under such a hiring, I think that the pauper, not having communicated to the party whom he contracted to serve for the whole year that he was in the militia, cannot be said to have lawfully hired himself for a whole year within the meaning of the 3 *W. & M. c. 11. s. 7*, and that being so, I am of opinion that no settlement was gained in the parish of *H.* — *HOLROYD J.* I am of the same opinion. It is not to be presumed without being stated in the case, that the pauper at the time of making the contract with his master communicated to him that he was in the militia, and there is nothing on the face of the case to show that such a communication was made. This case seems so full within the principle laid down by Lord Ellenborough, in *Rex v. Norton*. He there says, "A variety of cases have occurred, which have decided the question in the case of an apprentice, and this not on the ground of its being an excepted case, or as standing upon any occult efficacy in the indenture of apprenticeship; but on the broad principle, that one who has contracted a relation which disables him from serving any other without the consent of his first master, is not *svi juris*, and cannot lawfully bind himself to serve such second master, so as to gain a settlement by serving for a year under such second contract. In reason and principle it cannot make any difference, whether he be originally bound by a contract of apprenticeship, or by any other contract equally obligatory upon him, which disables him from binding himself to serve a second master." It is said that this case differs from that, because the militia not having been called out during the year, there was a year's service under a conditional hiring; but the objection is, that the pauper was not capable of making a contract, so as to give the master a controul over his services during the whole year. Now, no communication having been made to the master that the pauper had entered into a contract to serve in the militia, I am of opinion that this must be considered an absolute, and not a conditional, hiring for a year; and if that be so then it is quite clear, that the pauper was not capable of making an unconditional contract to serve for a whole year. I am, therefore, of opinion, in this case, that the pauper was not lawfully hired in the parish of *H.* for one whole year, within the meaning of the 3 *W. & M. c. 11. s. 7*. — *LITLEDAL J.* concurred. — Order of Sessions quashed.

Post, ii. pl. 264.

THE POOR LAWS.

CHAPTER I.

OVERSEERS OF THE POOR.

- I. *The Statutes relating to the Appointment.*
- II. *The Form of the Appointment.*
- III. *What Persons are liable to be appointed.*
- IV. *By whom the Appointment must be made.*
- V. *What number of Overseers may be appointed.*
- VI. *At and for what Time to be appointed.*
- VII. *Of and for what Place.*
- VIII. *Of the Appeal and Certiorari.*
- IX. *Of the Evidence of Appointment.*

I. *The Statutes relating to the Appointment of Overseers.*

See 27 H. 8. c. 25. 5 & 6 Edw. 6. c. 2. 5 Eliz. c. 3. 14 Eliz. c. 5. 18 Eliz. c. 3. 39 Eliz. c. 3. 43 Eliz. c. 2. § 1. 8, 9, 10. 13 & 14 Car. 2. c. 12. § 21. 17 G. 2. c. 38. § 3. 8. 54 G. 3. c. 91. 59 G. 3. c. 95.

II. *The Form of the Appointment.*

1. **REX v. Searle**, E. T. 12 Ann. EDITOR'S MSS. — Two justices appointed three persons to be overseers for the parish of H., and one of the objections to the form of the appointment was, that it did not appoint them to be overseers of the said parish together with the churchwardens thereof as the statute 43 Eliz. c. 2. directs; — but THE COURT disallowed the objection, saying, that when overseers are once legally appointed, they are by the operation of law joined with the churchwardens of the parish for which they are appointed.

An order need not state that the persons appointed are, together with the churchwardens, overseers of the poor.

2. **Rex v. St. George's**, T. T. 9 G. 1. Fort. 320. — The nomination of overseers of the poor was, that such by name were appointed to set the poor to work, &c., mentioning the several duties in the act, but did not in express words appoint them overseers: and for this reason the nomination was quashed.

They must be appointed overseers *eo nomine*. 4 Com. Dig. 99.

3. **Rex v. Sheringbrooke**, E. T. 11 G. 1. 2 Ld. Raym. 1394. — An order of justices of the peace, made for appointing the defendant overseer of the poor, being removed into the Court of King's

The appointment must state that the persons appointed are

substantial householders.

S. P. Rex v. Flag, Foley, 8.

Rex v. Marlow, Foley, 5.

Rex v. Curle, Say. Rep. 279.

The appointment must state the county in which the parish is situated.

And allege that the persons appointed are substantial householders in the parish.

S. P. Rex v. Morall, M. T. 7 G. 2.

An appointment of overseers must expressly state that under 43 Eliz. c. 2. the place for which the appointment is made is a parish.

(a) Say. Rep. 279.

(b) Post, pl. 43.

(c) 3 Bulstr. 296.

Bench by *certiorari*, was quashed upon motion, because it did not appear by the order that he was a *substantial householder*, which is expressly required by the words of the statute 43 Eliz. c. 2.

Rex v. Weobley, 2 Str. 1261. Rex v. Morall, M. T. 7 G. 2. Rex v. Curle, Say. Rep. 279. Rex v. Stubbs, 2 T. R. 406. Rex v. Morris, 4 T. R. 550.

4. Rex v. Houlditch, T. T. 13 & 14 G. 2. EDITOR'S MSS.—Two justices of the county of Surry had appointed two persons overseers of the poor of the parish of W.; but it was not stated that the parish of W. was in the county of S. or in any other county. — THE COURT took the objection to the order for this reason, and it was accordingly quashed.

5. The case of the Overseers of Weobly, M. T. 20 G. 2, 2 Str. 1261. — Two sets of overseers were appointed, and both quashed; one, because the persons appointed were described only as "*principal inhabitants*," instead of pursuing the words of the statute 43 Eliz. c. 2. which are "*substantial householders*;" the other, because it only called them "*substantial householders*," without adding *there or in the parish*, and this too not in the appointment as it ought to be, but only in the direction at the foot of it.

6. Rex v. Severn, E. T. 29 G. 2. Say. Rep. 278. — The defendants were appointed overseers of the poor within "the precincts of THE TOWER, otherwise called the parish of St. Peter's ad Vincula, within His Majesty's Tower of London." — DENISON J. We are of opinion that the appointment is void. It expressly appears to be an appointment under the 43 Eliz.; but it is not a good appointment under that statute, nor under the 13 & 14 Car. 2. The former statute only gives a power of appointing overseers of the poor in *parishes*; and this power is by the latter statute only extended to *townships* and *vills*; and we are of opinion, that both these statutes, which have in other instances been construed strictly, ought to be so construed in the present case. In the case of Rex v. Curle (a), it was holden, that the very words *substantial householders*, which are the words of the 43 Eliz., must be used in an appointment of overseers of the poor; and an appointment, wherein the persons appointed were called *principal inhabitants*, was quashed: and the same strictness in construing this statute has been observed in divers other cases. It has been said, that as the place for which the defendants were appointed overseers, is called "the parish of St. Peter's ad Vincula, within His Majesty's Tower of London," as well as "*Precinct of the Tower*," it is a parish by reputation, and the case of Hilton v. Pawle (b) has been cited, in which it was holden, that a parish is within the meaning of the 43 Eliz.; but although a place may be a parish by reputation, and although overseers of the poor may be appointed for such place, yet an appointment of overseers for such place will be bad, unless the place be therein expressly called a parish. In the present case, the description of the place is, *Precinct within the Tower*: for the words *Parish of St. Peter's ad Vincula, within His Majesty's Tower of London*, are under an *otherwise called*; and the rule in such cases is, that the name or description which precedes an *otherwise called*, is always to be considered as the true name or description, and not the name or description which follows. In an anonymous case (c), it is said, that the whole Court was clearly of opinion, that the true name of a man is that which precedes an *alias dictus*, and an indictment was

in that case quashed, because the addition of the person indicted followed the *alias dictus*. It has been said, that, although the place of which the defendants were appointed overseers be not a parish, the Court may intend that it is a township or vill, within the meaning of the 13 & 14 Car. 2.; but, as it is not expressly called a township or vill in the appointment, the Court ought not to intend that it is a township or vill, in order to make an appointment good which is not warranted by that statute.

7. *Rex v. Stubbs*, E. T. 28 G. 3. 2 T. R. 406.—The township of the monastery of *Renton Abbey*, consisted of three houses, viz. the abbey-house, with about four hundred acres of land which was occupied by Mrs. S.; a small house, with an acre of land belonging to it, occupied by one M., a poor man with a large family, and servant to Mrs. S.; and a cottage with about five roods of land, the property of, and occupied by, a poor day-labourer. These three persons were appointed overseers of the poor; and it was objected, that the two men, on account of their poverty, were not substantial householders. But THE COURT held that the words "*substantial householders*" are to be understood as a *relative term*; and therefore, in a place where there are a great many opulent farmers, the appointment of a day-labourer may be improper; but that in the present case, as there were no other persons to serve (c), the appointment ought to be allowed.

But the words "*substantial householders*" are to be relatively taken; and persons though poor may be appointed, if there are no opulent householders in the parish.

(c) 1 Sid. 262.
1 Keb. 933.
2 Show. 75.

The appointment need not state the justices to be justices of the division.
R. v. Sparrow,
2 Sess. Cas. 140.

Now, An appointment of overseers is good, without mentioning the justices to be of the *division*; for the words of the statute in this case are only directory. In some of the ancient statutes, not now in force, as particularly the 22 Hen. 8. c. 12., the justices were required to *divide* themselves, for the better execution of the regulations concerning the poor; and thence came the clause in the subsequent statutes, that the justices of the *division* were to do such and such things. But as there is no law at present which requires them to *divide* for the aforesaid purposes, there is properly no *division*, in the sense which the statutes intended; and consequently it cannot be necessary to set forth now, that the justices are in or near the *division*.

8. *Rex v. Morris*, H. T. 33 G. 3. 4 T. R. 550.—Two justices in June 1791 appointed the defendant, being a substantial householder of the parish of L. to be overseer of the poor of the hamlet of V. in the said parish; he appealed to the Sessions, where the appointment was confirmed with costs, stating it to be on the hearing of the appeal touching the appointment of R. M. as *one of the overseers* of the poor of the hamlet of "V." &c. To the order of Sessions was annexed a rate on the inhabitants and all other substantial householders in the parish of L., towards the relief of the poor, May 16. 1791; and in that part of the rate, which respected V. hamlet, the appellant was rated. It was contended, that this is not an appointment for a *parish* under the 48 Eliz. c. 2., nor for a *vill* under 13 & 14 Car. 2., but for a *hamlet* only, which is merely a subdivision of a parish.—LORD KENYON C. J. It is objected that this is not a township or vill, but only a hamlet: but *vill* and *hamlet* are in common acceptation used as synonymous terms. If indeed the justices at the sessions had stated specially in their order that this was not a vill, we should have been bound to quash the order of appointment; but as it may be a vill

An order appointing A. a substantial householder of the parish of B. to be overseer for the hamlet of C. in the said parish, is good.

we are now to intend (a) it for the purpose of supporting the order. The same intendment may be made as an answer to the third objection; and if we were to look at the rate, which indeed should not have been returned by the *certiorari*, the appellant there appears to be rated for property in *V.*—Both orders affirmed.

III. What Persons are liable to be appointed.

See Stats. 32 H. 8. c. 40. 1 W. & M. c. 18. § 7. 6 & 7 W. 3. c. 4. 10 & 11 W. 3. c. 23. § 2. 18 G. 2. c. 15. 42 G. 3. c. 90. § 174. 58 G. 3. c. 70. § 2. 59 G. 3. c. 12. § 6, 7. 35.

An attorney or practising barrister cannot be appointed a parish-officer.

Noy, 112.

March, 30.

Off. Brev. 162.

2 Keb. 477.

1 Lev. 265.

2 Rol. Ab. 272.

1 C. Dig. 450.

2 Haw. P. C. 99.

(b) 2 Keb. 578. 1 Mod. 22. 1 Sid. 431. 2 Hawk. P. C. 100.

An alderman of London is not liable to serve parish offices.

Doug. 331.

Tidewaiters and other revenue officers are privileged from serving the office of overseer.

See also the case of *Cawthorne v. Campbell* in the Exch. Feb.

1790, 1 Anstr.

Rep. 216, and

Rex v. Warner, post, pl. 16.

A clergyman though without cure of souls, is privileged from being overseer.

1 Mod. 280.

1 Lev. 303.

1 Vent. 105.

2 Stra. 1107.

9. *Rex v. Prouse*, M. T. 10 Car. 1. Cro. Car. 389. — P., an attorney of the King's Bench, was elected tithingman of T.; and the Sessions refused to admit his writ of privilege, as entitling him to be discharged, on the ground that there was a special custom for every parishioner to serve the office, according to the situation of their houses. It was therefore moved into the King's Bench; and, after argument, ALL THE COURT held, that such a custom could not prevail against a person who is by his office to be attendant on the superior courts: and in the case of *Rex v. Pordage* (b) it is admitted, that PRACTISING BARRISTERS have the same privilege.

10. *Rex v. Abdy*, T. T. 16 Car. 1. Cro. Car. 585. — One ABDY, an Alderman of LONDON, was elected a constable in Essex, where he resided; and on the case being removed into, and argued in, the King's Bench, ALL THE COURT held, that he ought to be discharged by his privilege, in like manner as attornies attending the courts are discharged of such office, and other offices in the parish; and a writ was accordingly awarded for his discharge.

11. *Raymond v. St. Botolph's Aldgate*, 32 Car. 2. 2 Chan. Rep. 196. — The plaintiff was one of the king's waiters in the port of L., but used the trade of a common brewer, and executed his said place by a deputy; the defendants insist he is not to be exempted from bearing the office of overseer of the poor of the parish. THIS COURT declared that the King's officers ought to have the benefit of their privilege; and the execution thereof by a deputy, or his dealing in another trade, should not in any sort be prejudicial to him, he being to answer for any neglect or misdemeanor committed by his deputy, for that it is not reasonable that the King's servants or officers should have nothing else to subsist on but their immediate services or places under His Majesty, and take no other employment on them; and although a privilege of that nature be granted in THE EXCHEQUER, a writ of privilege under the great seal was, and ought to be taken in all respects as effectual: and therefore the Court allowed the plaintiff his privilege.

12. *Anonymous*, E. T. 3 Ann. 6 Mod. 140. — A writ of privilege was moved for to have a clergyman, who appeared to have no cure of souls, privileged from the office of overseer; and though HOLT C. J. seemed against it, because, by him, their privilege of exemption is only extendible to their spiritual revenues, and if in case the privilege be personal, it is only from common law offices, and

(a) Vid. Salk. 501. "If a place be named generally, that place shall be taken to be, and intended, a vill."

especially if they are without cure, as here; yet THE OTHER THREE JUSTICES were strongly against him; but however, for His Lordship's satisfaction, they decreed that it should be stirred again. (a)

13. *Rex v. Moor*, 2 W. & M. Carth. 161. — The defendant was a citizen of L., but resided in the summer at H., and was chosen by the parishioners overseer of that parish. Upon appeal to the Sessions he was discharged; but it not appearing upon the order that he was appointed by two justices, pursuant to 43 Eliz., the Court of King's Bench would not quash the order, because nobody was affected by it. — THE COURT thought such practice of appointing persons only resident for a time, ought to be discouraged; and it is said by LORD CHIEF BARON COMYNS (b), that such persons ought not to be chosen, and he refers to the report of this case.

14. *Rex v. Gayer*, H. T. 30 G. 2. Burr. 245. — G. being appointed overseer of the poor, appealed to the Sessions, who made the following order: "It appearing unto this Court, that G. was and is an acting justice of the peace for the county, and also a lieutenant of marines (c) on half pay, and that there are other sufficient and substantial householders within the said parish, this Court doth therefore vacate and make void the said warrant of appointment." The question upon the argument was, Whether the reasons given were sufficient; and particularly whether the office of justice of peace, and the office of overseer are compatible offices; and if so, whether the objection could be removed by appointing a deputy overseer. — LORD MANSFIELD: The general question relating to the compatibility of offices, and the power of appointing deputies, is unnecessary to be considered upon the present matter. (d) The Sessions, on appeal, have a right to exercise the same latitude of discretion, in judging who are fit to be nominated overseers, as the two justices had. They have given their opinion that G. was not a proper person to be appointed overseer. They are not obliged to give any reason for their opinion, because the legislature has intrusted them, on an appeal, with the power and authority of appointing overseers. If the Sessions had given no reason, their order had been undoubtedly good; we must have presumed that they acted upon proper grounds. It is true, that where the whole reason is set out, and is clearly wrong, we may and ought to quash an order manifestly made by mistake; but then the bad reason must appear to have been their only inducement. If there may have been other grounds, they should be presumed sufficient; and the order ought not to be set aside, because some of the reasons, unnecessarily given, appear to be bad. Here the whole reason is not

Persons only occasionally resident ought not to be appointed overseers.

Dal. c. 73.
a. 2. p. 216.

(b) 3 Com. Dig.
"Justices of the Peace,"
(B. 64.)

An acting justice or a half-pay officer ought not to be appointed, if there are other persons more eligible to the office; and the justices of the peace have a discretionary power to select proper persons.

Cald. 241.
Burr. S. C. 57.

(a) It is said in Gibson's Codex, 215. that all peers of the realm, by reason of their dignity; all clergymen, by reason of their order; and all parliament-men, by reason of their privilege, are exempted from the office of churchwarden.

(c) See 3 Keb. 309. 1 Sid. 272. 6 Lev. 233. 2 Hawk. P. C. 100. as to the liability of a captain in the guard to serve parish offices: and it seems that a person sworn one of the yeomen in or-

dinary of His Majesty's body guard is exempted from serving the office of overseer. R. v. Great Marlow, 2 East, 245.

(d) In the case *Rex v. Pateman*, M. T. 29 G. 3. 2 T. R. 779. Lord Kenyon C. J. says, that in the case of *R. v. Gayer*, it seemed to be agreed that the offices are incompatible, because the accounts of the overseer are subject to the controul of the justice.

given : they say there were other persons qualified ; and supposing *G.* liable to serve the office, they might think him not so proper as many others. It does not appear that they considered him as exempted or disqualified from being overseer, and that they vacated the order of justices on that account as illegal. The execution of a discretionary power, when it is not necessary to give a reason, ought to be supported, unless the whole reason is set forth, and is manifestly wrong.— Order of Sessions confirmed.

The words
"substantial"
"householders"
have no refer-
ence to sex; and
therefore, if
there be no other
persons, a wo-
man may be ap-
pointed; for
there is nothing
in the nature of
the office to ren-
der women in-
competent.

15. *Rex. v. Stubbs*, *E. T.* 28 *G. 3.* 2 *T. R.* 395.— *A. S. widow, T. M. and J. K.* were appointed overseers of the poor for the township of the monastery of *R. A.* The township of the monastery of *R. A.* is an extraparochial place, containing three houses only, and about four or five hundred acres of land. Those three houses are respectively occupied by *Mrs. S.* who lives in the *Abbey-house*, and occupies the greatest part of the land within the township. The house occupied by *M.* is a small house, which he rents, with something more than an acre of land belonging to it: he has lived in it two or three years, with a wife and two children, and is poor and a servant to *Mrs. S.* *K.* is a labourer, and poor; but the house in which he lives, with four or five roods of land belonging to it, is his own property.— THE COURT, after argument at the bar, took time to consider: and *ASHHURST J.* now delivered the opinion of the Court.— We think that the circumstance of one of the persons appointed being a woman does not vitiate the appointment. The only qualification required by 48 *Eliz.* is, that they shall be *substantial householders*; it has no reference to sex. The only question then is, whether there is any thing in the nature of the office that should make women incompetent; and we think there is not. There are many instances where, in offices of a higher nature, they are held not to be disqualified; as in the case of the office of high chamberlain, high constable, and marshal, and that of a common constable, which is both an office of trust, and likewise, in a degree, judicial. So in the case of the office of sexton. (a) As to *Chardstock's* case (b), that is no conclusive authority. It is to be collected from the case, that there were other persons in the parish proper to serve; and if so, the Court held the justices had not acted improperly in refusing to approve of a woman. Where there are a sufficient number of men qualified to serve the office, they are certainly more proper; but that is not the case here; and therefore, if there is no absolute incapacity, it is proper in this instance from the necessity of the case. And there is no danger of making it a general practice; for as the justices are invested with a discretionary power of approbation, it is not likely that they will approve of such an appointment when there are other proper objects.

Dyer, 285.
Callis, 252.
Ld. Ray. 1014.
2 Stra. 1114.
1215.
3 *Keb.* 32.

(a) Decided upon great debate in the case of *Olive v. Ingram*, 2 *Str.* 1114, and reported very fully, 7 *Mod.* 203.

(b) *Rex v. Chardstock*, *Eastor Term*, 10 *Ann. Fin. Abr.* title *Poor*, 415.— A man and woman were elected overseers; and on the justices appointing the man, and refusing to appoint the woman, a *mandamus* was applied for to compel justices to nominate two householders.— *POWELL J.* declared that a woman is

not to be an overseer of the poor, and that there can be no custom to put her in on account of her being an housekeeper, because it is an office created by act of parliament.— *PARKER C.J.* said, the justices had done well in refusing to nominate a woman; and directed application to be made to the justices to nominate another person; and that if they refused, the Court should be moved the next term for a *mandamus*.

16. *Rex v. Warner*, M. T. 40 G. 3. 8 T. R. 875. — The defendant was indicted for not taking upon him the office of overseer of the poor, to which the indictment stated that he was in due manner nominated on the 16th of April, 38 G. 3. The cause was tried before PERRYN Baron, when it was insisted on behalf of the defendant, that he was exempted from serving the office by reason of his holding another office, that of coal-meter at *Maningtree* within the port of *Harwich*, under an appointment from the commissioners of the customs by deputation; the duties of which office were (it was said) incompatible with the office of overseer of the poor. And he also relied on the clause of exemption in the patent, under which the commissioners of the customs were appointed by the Crown, wherein it is stated that "to the intent that the said commissioners may be better enabled to attend the execution of their commission, we do hereby grant, declare, and ordain that you our said commissioners, and all officers of the customs, as well those appointed or authorised by letters patent, or by constitution or warrants from the commissioners of our treasury, &c. as those officers which are or shall be appointed or deputed by you our said commissioners in or for the management of our said revenue, shall not be compellable to serve on any jury, or to appear and serve at any assizes or sessions, or to serve any parish or other public office whatsoever, civil or military; hereby requiring and commanding all mayors, sheriffs, justices of the peace, &c. and all other our officers and subjects whatsoever whom it may concern, to take notice of this our royal pleasure at their peril, &c." It appeared in evidence that the duty of a coal-meter is to weigh and measure the several sorts of coals, culm, and cinders, upon which certain duties are imposed by several acts of parliament, imported or landed at *Maningtree*; and which appeared to be about 12,000 chaldrons in a year; which was to be done by the defendant and four others; and that the necessary attendance of the defendant rendered it impossible for him personally to execute the office of overseer. It was also proved that there was no necessity for appointing the defendant overseer, inasmuch as there were many other substantial householders in the parish capable of taking the office. — It was said in answer, by the counsel for the prosecution, that the King could not, by his prerogative, exempt the defendant from serving the office of overseer, which was an office created by statute; and with regard to the supposed incompatibility of executing the two offices, that he might serve the office of overseer by deputy. — The learned judge over-ruled the objections, and the defendant was found guilty. — Lord KENYON C. J.: I doubted at first to what branch of the prerogative this power of exemption was to be referred, yet upon looking into the authorities, and especially the case of *Bishop v. Lloyd*, I am satisfied that it is well founded. And I feel myself greatly strengthened by finding that it was upheld by two such great Judges as Sir Thomas Pengelly and Sir John Comyns; by the latter of whom it is said, that the form of the writ of privilege as now used was drawn. In point of practice I have found other exemptions claimed and allowed, though the origin of them may not now be known. The first time I attended on the *Chester* Circuit as Chief Justice of *Chester*, an old instrument was brought for my signature, according to custom, in which the inhabitants of the town of *Nantwich* claimed an exemp-

An officer of the customs is exempted from serving the office of overseer of the poor, though he has not his writ of privilege at the time.

tion from serving on juries. I signed the instrument, because I found it had been regularly signed for above two centuries back by my predecessors in the office, some of whom, particularly President *Bradshaw*, could not be suspected of being very desirous of stretching the prerogatives of the Crown. — GROSE J. said, he was not satisfied that even the other ground of objection to the verdict, upon the incompatibility of the offices, was not well founded. — LAWRENCE J. referred to the case of the *Mayor of Norwich v. Berry*, where it was holden that an attorney of the court was privileged from serving the office of sheriff in a corporation of which he was a member, though it did not appear that he had taken out his writ of privilege at the time. He also referred to 2 *Inst.* 130. where it is said, that "If a man have a charter of exemption and show it to the sheriff, yet notwithstanding he may return him, for the sheriff is not to judge of his charter, nor to allow or disallow thereof; but if he will have the effect of his charter, he must sue out a writ of allowance of this charter, and deliver the writ to the sheriff, and show his charter to him; and then if the sheriff return him, he may have his action on the case against the sheriff." From this the purpose of a writ of privilege may be collected, that without it the officer is not bound to take notice of the privilege; but it does not follow that the Court will not take notice of the privilege when it is shown to them, though the writ be not taken out.

The president and members of the College of Physicians are not eligible to the office of overseer. 1 Keb. 439.

A Baptist preacher qualified according to stat. 1 W. & M. c. 18. is exempted from serving all parish offices, whether they existed before or were created since that act, even though he be also engaged in trade.

17. The president of the college of physicians, in London, and the commons and fellows of the same, are, by 32 H. 8. c. 40. exempt from serving the office of overseer. Yet it seems to have been holden, that the equity of this statute doth not extend to other physicians not mentioned in it.

439. 2 Keb. 578. 2 Mod. 22. 1 Hawk. P.C. 101.

18. *Kenward v. Knowles*, E. T. 17 G. 2. *Willes*, 463. — To trespass the defendant justified under the 10 G. 2. c. 18. for rebuilding the church of *St. Olave in Southwark and London*, by a distress for non-payment of a penalty of 10*l.* forfeited by the plaintiff for refusing to take upon him the office of one of the collectors of the rates for rebuilding the church under that act. The plaintiff at the time of being nominated collector was a merchant or dealer in hops, an inhabitant and parishioner of *St. Olave*, and also a dissenting preacher, who scrupled the baptizing of infants, commonly called a Baptist. The place of meeting was duly certified and registered, and the plaintiff duly qualified as required by the toleration act. It was also proved, that ever since the toleration act it had been usual for Baptist ministers in many instances to carry on secular business or employment. The question reserved was, Whether the plaintiff as such minister was exempt from serving the duty or office of collector. The Court said, The toleration act is grounded on natural rights, and the highest natural right is that of the conscience. The statute ought to receive a large and beneficial exposition, if the case wanted it: but the present is not only within the intent but also within the very letter of it. Every person who is in holy orders, and is a teacher qualified according to 1 W. & M. c. 18. is exempted from serving any parochial office, or other office in the parish, &c.; the plaintiff is so qualified, and therefore is exempted. This is a parochial office in the nature of it; the stat. 10 G. 2. calls it an office. It is

appointed to by the parishioners, and exercised in a parish. The addition of the plaintiff's being a merchant or a *dealer in hops* varies not the case; it does not destroy the privilege any more than a clergyman's holding a farm or exercising any temporal office. The toleration act exempts teachers from all *future offices*. — Judgment was given for the plaintiff.

19. *Res v. Poynder*, *H. T. 3 & 4 G. 4. 1 B. & C. 178.* — Indictment against the defendant for refusing to take upon him the office of overseer of the poor of the parish of *St. A.* Plea, not guilty. At the trial, before ABBOTT C. J. the only question was, whether the defendant was a householder, within the meaning of the 43 *Eliz. c. 2.* It appeared that the defendant *W. H.* and *T. P.* the younger, were lime-merchants and co-partners, and were the owners of a dwelling-house, yard, premises, and building in *Earl Street*, in the parish of *St. A.* in the city of *London*, but that neither of them ever slept there, the defendant and *P.* the younger dwelling at *C.* and *H.* at *S.* in the parish of *T.* in the county of *M.* One *M.* who managed the business for them, resided in the house in *Earl Street*. The rent, rates, and taxes were paid by the firm. Each of the partners frequented the premises daily, for the purpose of business, and the defendant had once voted at an election of a lecturer, which was a privilege belonging to resident householders. It was contended at the trial, that the defendant was not a householder within the statute of *Elizabeth*. The Lord Chief Justice was of opinion that he was, and a verdict was found for the crown. — *PER CURIAM.* When a similar question (*a*) was under our consideration, we were not insensible that a distinction might be attempted to be made between those cases where the legislature intended to confer a benefit, and others where it intended to impose a burden. We were of opinion, that there was no foundation for such a distinction, and that the same rule of construction ought to prevail in all cases. We have no doubt in this case that the defendant is a householder within the meaning of the statute of *Eliz.* It was in evidence that he had enjoyed one of the privileges of a resident householder; for he had voted for a lecturer, which was a privilege belonging to resident householders only. — Rule refused.

A., *B.*, and *C.*, carrying on trade in partnership, had a dwelling-house, yard, and premises, in a parish in *London*; all the partners were in the habit of frequenting the premises daily for the purpose of business, but none of them resided there. The dwelling-house was inhabited by a clerk, who managed the business for them, but the rent, rates, and taxes were paid by the firm: Held, that each of the partners was a householder within the 43 *Eliz. c. 2.* and liable to serve the office of overseer.

IV. By whom the Appointment must be made.

See *Stats. 22 H. 8. c. 12. 43 Eliz. c. 2. § 10. 54 G. 3. c. 91.*

20. *Res v. Arnold*, *T. T. 4 G. 1. Str. 101.* — The defendants were indicted, for that they being churchwardens, and two others overseers, did refuse to join with the overseers in making a poor's rate, &c. — PRATT C. J. held the prosecutor to show an appointment of the overseers, under the hands and seals of two justices, as the statute requires; and he rejected parol evidence, because, he said, it must be produced, that he might judge whether it were a sufficient appointment. He quoted *Willoughby v. Dixey* in the Common Pleas, where a will entered in the Spiritual Court books, to be delivered out to the executor, was refused to be read till application and refusal of the executor was proved; and the same in *Sir Edward Seymour's case (b)*, as to a deed. — The defendant was acquitted.

Overseers must be appointed under the hands and seals of two justices.

Foley, 16.

1 *Sess. Cas.* 141.

(b) 10 *Mod.* 8.

(a) *Res v. Hall*, 1 *B. & C.* 123. and see *Res v. Adlard*, 4 *B. & C.* 772.

Overseers cannot be appointed by the Sessions. S. C. 1 Seas. Cas. 324. S. P. Rex v. Great Marlow. Foley, 5.

Nor by the mayor of a corporation, and a justice for the county; but if there be only one justice in the county, perhaps he alone may appoint. S. C. 1 Bl. Rep. 649.

(a) 1 Bl. Rep. 650.

And the two justices must sign and seal the appointment in the presence of each other.

Plowd. 298. Dalt. c. 6. 6 Mod. 180. Salk. 73. 478. 568. 5 Mod. 322. Andr. 238. Bur. S. C.

21. *Rex v. Flag*, M. T. 13 G. 1. *Foley*, 8. — An order was made by two justices of peace, appointing two persons overseers of the poor of the two villis of F. and C.: they appealed to the Sessions, who appointed that these two villis shall choose several overseers for the future, and that they should collect severally in their villis; and when they have collected, then to distribute those assessments jointly as before; and confirmed the order of justices. And the order of Sessions was quashed, because the Sessions have no original jurisdiction to appoint overseers.

22. *Rex v. Butler*, E. T. 8 G. 3. — The parish of the *Holy Trinity* in *Guildford* lies partly within the jurisdiction of the corporation of *Guildford*, and partly out of it. On *Easter Sunday*, 1767, about half past eleven at night, the mayor of *Guildford*, and one justice for the county at large, made an appointment of two overseers for this parish; and on *Easter Monday* about noon, two of the aldermen of the corporation, being justices of the peace for the corporation, appointed two other persons, the present defendants, to be overseers for the same parish. This last appointment was certified into the King's Bench. The SOLICITOR-GENERAL moved to quash it, because the mayor alone had power, by 43 *Eliz. c. 2.*; and that his appointment, though in fact antecedent, yet, whether antecedent or not, superseded the other appointment; and that its being made on a *Sunday* is no objection to it; which was allowed by the Court. — By the COURT: Quashing an appointment, where the fault does not appear upon the face of it, is *ex debito justitiæ*. But where the fault does appear upon the face of the appointment, there the party has another remedy by action, and quashing is not *ex debito justitiæ*. Of this last kind is the present appointment, which we will not quash. This is not a proper case in which an appointment may be quashed; the year is over, and the defendants might be ruined by actions. But we have no difficulty upon the principal question. The statute of *Elizabeth* gives power to justices in, as well as out of, sessions; and therefore cannot apply to the head officer of a corporation only, for he cannot constitute a sessions alone. The expression "*justice or justices*" may mean to comprise the case where there is but one justice; but such a power is dangerous to be trusted in the hands of one person, and was never claimed before. (a) — Rule for quashing the appointment discharged.

23. *Rex v. Forrest*, H. T. 29 G. 3. T. R. 38. — The case, among other facts, stated, that six persons were put in nomination for the office of overseer; that *Jacob Leroux*, an acting magistrate in the parish, who attended the vestry and voted, without waiting for the return of the election, signed a warrant appointing *Forest*, *Powel*, and *Jones*, overseers for the ensuing year; that he then sent such warrant to three other justices that they might sign it: that they separately signed the same at their respective houses; and that no two of them had signed it in the presence of each other. — LORD KENYON C. J. Perhaps at this time of day no great inconvenience would follow from permitting the appointment to be made by a single magistrate; but we are to decide this question on the 43 *Eliz. c. 2.* which expressly declares that the overseers shall be nominated by two or more justices of the peace whereof one shall be of the QUORUM. Now those words are very material in the decision of a question arising on this statute; for

though in modern times all the justices in the commission, except one, are of the *quorum*, yet at the time when that act passed, some persons were selected on account of their superior knowledge, and appointed to be of the *quorum*. However, I do not wish to decide on that sort of argument. But it is admitted, that in the case of orders of removal they must act together; and for this reason that they should assist each other, and that the result of their conference should be the ground of their determination. Now I cannot distinguish this case from that. This is not merely a ministerial act; if it were like signing a rate (a), that perhaps might vary the question; but it is a judicial act, wherein the justices are to exercise a discretion; and in order to make this a good appointment, the justices should have acted together. — **AMHURST J.** The justices in appointing overseers do not act ministerially; the statute has vested a discretion in them, and they should act together; and it being a matter of discretion, they should confer together, for the purpose of a communication on the subject-matter on which they are to determine. But this cannot be done when they are not together, and when no conference can take place. — **GROSE J.** The justices should be together when they sign the appointment. This is not a mere ministerial act; if it were, the justices would have nothing more to do than to confirm the appointment presented to them by the parishioners; but they are to exercise a discretion on the subject; and the general rule is, that when an act of parliament requires the concurrence of two magistrates, they should both act together. This point has been determined not only in the case of *orders of removal*, but in *orders of bastardy* also, in *Billing v. Prim* (b), and in another case in the Common Pleas.

(a) 1 Stra. 395.
3 Doug. Elect.
142. in notis.
R. v. Uttoreter,
and R. v. Jus-
tices of Dor-
chester.

24. *Rex v. Great Marlow* (c), H. T. 42 G. 3. 2 East, 244. — Sir W. C. and T. P. two justices of the peace for the county of Bucks, met at Great Marlow on the 18th of April last, and by warrant under their hands and seals, appointed J. Webb, J. Johnson, J. Gosling, and R. J. Oslade, to be overseers of the poor of the said parish. On the 2d of May last another instrument, purporting to be a warrant appointing J. Field overseer of the said parish, was signed by T. W. Esq. another magistrate of the county, and on the 25th of the same month, was signed by the said T. P. (one of the magistrates first mentioned), who was not present when the said T. W. signed the same; nor was the said T. W. present when the said T. P. signed it. It was objected, that this was a judicial act, and ought to have been executed by both the magistrates at the same time, according to the case of *Rex v. Forrest*. — **GROSE J.** Both the magistrates ought to have been present when the appointment was executed: instead of which, many days elapsed between the signature of the one and the other, and they were not together when the act was done. This is essentially necessary to be observed, and much inconvenience may ensue from a contrary rule. Therefore, the appointment appearing to have been illegally made must be quashed. — **LAWRENCE J.** I should be sorry to relax the rule that the two magistrates should be together when the appointment is made: otherwise it will be hard to say to what length of litigation the question may not be carried,

At the very
time the ap-
pointment is
made.

See S. C. post,
pl. 42.

(b) 2 Black. Rep. 1017.

(c) See *Rex v. James*, post, pl. 331.

if it be to depend on the mind of the magistrate who first signed going along with the other, at the time he signs, as has been argued in support of the order. However, it is not necessary to decide any thing on that ground in the present instance. — *LE BLANC J.* We cannot say that an appointment under hand and seal, and a mere concurrence to such an appointment by another, are the same thing.

V. *What Number of Overseers may be appointed.*

See Stat. 39 *Eliz. c. 3.* 43 *Eliz. c. 2. § 1.* 17 *G. 2. c. 3. § 38.*

An order appointing *five* overseers for the same parish is bad.

S. C. Foley, 202. 2 Sess. Cas. 201.

And. 343. 7 Mod. 5th edit. 402.

(a) *Cro. Eliz. 723.*

Moor, 561.

(b) *21 Hen. 8. c. 13.*

(c) See *R. v. Wymondham, 6 T. R. 552.* and *R. v. Clifton, 2 East, 175.*
(d) *Foley, 8.*

(e) *Post, ch. iv.*

25. *Rex v. Harman, E. T. 12 G. 2. MSS.*—A motion was made to quash an order of justices appointing overseers for the parish of *St. Clement Danes*, in which *five* persons were nominated overseers, whereas the 43 *Eliz. c. 2.* says, there shall be four, three, or two, nominated. There were three appointments; on the 18th of *April*, the 24th of *April*, and the 26th of *April* 1738, by which the justices nominated *Harman* and four other persons overseers. *THE CHIEF JUSTICE.* I am doubtful whether this comes before the Court in such a way as for the Court to quash it. I think it will be a different consideration, if the act of parliament is to be construed, Whether, upon the face of such an order where five are appointed, the Court can determine the order void? But I cannot see how it can be called void, as to the four who act. *Drury's case* (a) is very near this kind of construction. The question there was on the act of *Henry the Eighth* (b), Whether a person could retain more than so many chaplains? But the retainer was held not void *in toto*, but good as to so many as were permitted according to the statute, and void as to the others. Now as we can only take notice of it upon the order, we cannot determine which to strike out, they being all equally nominated (c); and it differs from the case of *Clerkenwell* (d); for here the appointment is entire, and relates to all equally, and must be good or void in the whole; but as to the appointment, I have some difficulty to determine upon this return that it is void *in toto*, which we must do, or confirm it *in toto*. — *PAGE J.* I think this objection well taken, and that the order should be quashed. I cannot see it discretionary in the justices to name above four overseers. The act of parliament beginning with the greater number shows the extent intended. As to saying there are no negative words, there is no occasion for them in a new power; and the affirmative words imply a negative. In the case of chaplains, every man comes in separately, and therefore the retainer may be void as to some; but in this case they appear to be all nominated at once, and it is one act; and it must be void to the whole, they having exceeded the number of four. As to the usage, I think that, if it had been at the time of the act, and contemporary with it, would have been an exposition; but this is at so great a distance, that I think it cannot prevail. — *THE CHIEF JUSTICE.* I do not lay any stress upon the usage. — *PROBYN J.* I do not think it necessary the Court should give any opinion upon the appointment, for it may come before the Court in a more proper way by *indictment*. (e) This is an order in its nature void, and ought to be quashed. Where a new authority is created by act of parliament, and the act is particular

in its directions as to the persons *in toto* appointed, without giving any additional latitude to the justices, it cannot be said they can exceed the number; and saying so many shall be appointed, is saying no more shall be appointed. Usages that can vary the construction of an act of parliament must be universal, and not the usage only of a particular parish. (a) In the case of *Bewdley*, it was an universal usage; and, for the necessity of the thing, the opinion of all the Judges was to support that proceeding, in regard all the proceedings had been so for seven or eight years past. General usages, if they are immemorial, amount to a law (b); but I do not go only as to the time, but to the particularity of it. As to the case of *Clerkenwell*, four were retained, which they had a power to do; but here all are involved under one appointment; which the law doth not give the Court a power to quash as to part, but it must be good or bad *in toto*. — CHAPPLE J. I think it would be more reasonable that the number should be confined to the act than that they should have a latitude to extend it beyond it. It has been held in this Court in the *Brecknock case* (c), that a usage, though ever so long, will not take away the effect of a charter, much less of an act of parliament. *Curia advisare vult*. But the case as to this point was never determined. (d)

26. *Rex v. Besland*, H. T. 19 G. 2. MSS. — Two justices appointed the defendant an overseer of the poor of *Westwood Yates*, in the county of *Dorset*; and the appointment was confirmed by the Sessions on appeal. It was moved to quash the appointment, and the order confirming it. — LEE C. J. The objection is, that the justices have appointed only one single overseer, and not two, according to the 43 *Eliz. c. 2*. But this is no direction as to the manner of nomination. The question then is, Whether, having appointed one overseer, they have acted within the authority of that statute? It does not appear but there may be another appointment by another order, and the Court cannot say they have not appointed another; and if they have only appointed one, you may have a *mandamus* for them to appoint another. I do not see but this is a good appointment. In *Rex v. Harman* (e), the Court were very tender in overturning that order, and strongly inclined to think that the order was good; and I am certain, there are many parts of the kingdom where a single overseer is appointed. — DENISON J. Whatever the merits were before the Sessions we cannot tell, we must determine as it appears upon the order. There is no law that says, there shall be an appointment of two or more overseers *quo statu* (f): it may happen that there is only one substantial householder in a small village; and if he is appointed overseer (g), and another substantial householder come into the parish afterwards, cannot they appoint him also overseer? Suppose two are appointed overseers, and one of them is not a substantial householder, the Court cannot quash the whole appointment; then it will stand as in the appointment of one, which could not be, if the appointment of one were illegal. There is no occasion for the Court to give any opinion whether the justices can appoint one overseer only. — Both orders were confirmed. — NOTE, Mr. BURTON observes (h), that the appointment and the order of sessions were in this case confirmed, as not necessarily appearing to be a bad order; for it might be that others were appointed by other orders.

(a) *Calcl.* 147.

(b) *Cowp.* 565. 613.

3 T. R. 746.

(c) 8 Mod. 201.

(d) By Lord Mansfield, 1 Burr. 446.

The Court will not quash an order appointing one overseer, especially if it do not appear that others were not appointed by other orders. S. C. Wils. 128. 1 Burr. 445.

(e) *Ante*, pl. 25.

(f) See 4 T. R. 552.

(g) See Lord Mansfield's opinion, R. v. Eyford, *post*, pl. 60.

(h) 1 Burr. 446. *in notis*.

Not more than four overseers can be appointed for, or in one parish, unless it be divided into two or more divisions or townships.

S. C. Doug. 349.

And see *Rex v. Pinney*, *post*, pl. 31.

(a) *Ante*, pl. 25.

(b) *Post*, pl. 34.

(c) See ch. 2.
"Poor Rate."

27. *Rex v. Lordale*, H. T. 31 G. 2. Burr. 445. — Motion to quash an order of justices, appointing five overseers for the parish of *St. Chad* in *Shrewsbury*. — Lord MANSFIELD. In the case of *Rex v. Besland* no opinion was given judicially, whether the appointment of one overseer was valid, nor was the appointment quashed. In the printed case of *Rex v. Harman* (a), it is said, the Court refused to quash the order appointing five overseers; but that is a mistake. There is a known distinction between circumstances which are of the essence of a thing required to be done by an act of parliament, and clauses merely directory. The precise time, in many cases, is not of the essence. In *Rex v. Sparrow* (b), the justices had been guilty of a neglect in not appointing overseers within due time, and the poor could not have had a specific remedy, unless the justices might do it after the precise time, in obedience to a *mandamus* from this court. The clause relating to the appointment of overseers, by justices "in or near the parish" or "division," is only directory. Where there are different acts of parliament *in pari materid*, though not referring to one another, even though some may be expired, yet they shall be taken and construed together as one system, and as explanatory of one another; as for instance, the laws concerning church leases, and those concerning bankrupts. The 39 *Eliz. c. 8.* directs four householders, &c.; the 43 *Eliz. c. 2.* gives a power of appointing four, three, or two householders, in order to lessen the number according to the size of the parish; and there is some weight in the circumstance that the numbers descend. The statute 13 & 14 *Car. 2. c. 12.* ought to be taken into consideration, but that directs the appointment of the overseers in the large parishes to be according to the rules of 43 *Eliz. c. 2.* The act of parliament in 1740 relating to *St. Martin's*, restraining the number of overseers there to nine, shows the opinion of the legislature, that the justices have no power, under the 43 *Eliz. c. 2.*, to appoint what number they please. Since that act there have been made two acts, *viz.* the 17 *Geo. 3. c. 3.* and 17 *Geo. 2. c. 38.* relating to overseers (c) without extension of their number, or any variation therein. The precise number is not an immaterial thing; the office is a burden, and will not be better executed by a greater number than by a smaller; and I think the appointment of more than four is not warranted by the 43 *Eliz. c. 2.* In the parish of *St. Andrew's Holborn* there are eight overseers; but then there are three divisions there, and overseers for each; and orders of removal are made from one division to another. In *St. Giles's* there are eight; but in 1756, only four were appointed by the justices, and four more serve voluntarily as assistants; if five may be allowed, there is no boundary, and then there will be great inconveniencies. Upon the whole, the words are precise, and the usage, which alone occasioned my doubt, turns out the other way. — WILMOT J. The words of the act are so strong, that if the usage had been otherwise I should have doubted whether it could have controlled them. In the 18th clause, with respect to the island of *Fowlness* in *Essex*, a power is given to the justices to appoint such a number of overseers as the exigence of the place shall require, which shows, that where the legislature meant an indefinite number they have expressed it. The parish would not have a better security by an indefinite number, for each man is answerable only for the money he

receives, and is accountable for his own acts only. — The other Judges concurring, the rule was made absolute.

28. *Rex v. Morris*, H. T. 32 G. 3. 4 T. R. 550. — Two justices in June 1791 appointed the defendant, "being a substantial householder of the parish of *Llangendeirn* in the county of *Caermarthen*, to be overseer of the poor of the hamlet of *Velindre* in the said parish." He appealed to the next quarter sessions of *Caermarthen-shire*, where the appointment was confirmed with costs, stating it to be "on the hearing of the appeal touching the appointment of *R. Morris*, as one of the overseers of the poor of the hamlet of *Velindre*," &c. To the order of sessions, returned by the *certiorari*, was annexed "a rate on the inhabitants and all other substantial householders in the parish of *Llangendeirn*, towards the relief of the poor, May 16th, 1791;" and, in that part of the rate which respected *Velindre* hamlet, the appellant was rated. It was objected that this was an appointment of one overseer only, and could not therefore be supported, either under the 43 *Eliz. c. 2*. § 1. which requires four, three, or two in a parish, or under the 13 & 14 *Car. 2. c. 12. s. 21.* which directs that there shall be two or more overseers appointed in the townships or villages in those parishes which cannot reap the benefit of the 43 *Eliz.* — Lord KENYON C. J. As to the objection that this is only an appointment of one overseer, in support of which *Rex v. Lordale* (a) was cited; I well remember that that case underwent a great deal of discussion at *Westminster-hall*; to the determination of that case I subscribe my opinion, that there must be four, three, or two overseers appointed under the stat. 43 *Eliz. c. 2*. But it never has been determined that they must be all appointed by one instrument. And here we are not left to conjecture that no other person was appointed overseer of this place; for it appears on the order of Sessions that this was an appeal of "one of the overseers of *Velindre*." — Both orders confirmed.

The four, three, or two overseers may be each of them appointed at different times and by different instruments.

(a) *Ante*, pl. 27.

29. *Rex v. Clifton*, H. T. 42 G. 3. 2 *East*, 168. — The parish of *Ashbourne* in *Derbyshire* consists of five townships, viz. *Yieldersley*, *Sturston*, *Clifton*, *Offcote*, and *Ashbourne*, which severally maintain their own poor, and have separate and distinct overseers. The parish of *Ashbourne* has two churchwardens, who are appointed for the parish at large. There was only one overseer appointed for the township of *Sturston*, which was generally the case, though, in some few instances, there have been two, and there was always a sufficient number of inhabitants to have two overseers appointed. The question was, Whether one overseer only could be appointed for a township under the statute 13 & 14 *Car. 2. c. 12.*: and the Court was of opinion that the appointment was void; for the statute expressly requires at least two overseers to be appointed.

An appointment of one overseer alone for a township is bad.

See S. C. post, Vol. II. *Certificates*.

30. *Malkin v. Vickerstaff*, M. T. 60 G. 3. 3 B. & A. 89. — Annuity for goods sold and delivered, with the usual money counts. On the trial, the following facts appeared: The parish of *Ipsstones* contains two divisions; the one called the township of *Ipsstones*, the other the township of *Morredge and Foxt*. In 1817 the defendant and John Harrison were appointed overseers of the latter division, and John Prince and William Vickerstaff of the former. In the course of that year Prince gave authority to the plaintiff, who lived near *Cheadle*, to pay 2s. 6d. per week to a pauper belonging to *Ipsstones*, then residing at *Cheadle*.

Two divisions within a parish had separate overseers and separate rates, and managed their poor separately; but at the end of every year, in making up their accounts, the

overseers of the one (if they had money in hand) paid the balance over to the overseers of the other : Held, that this was in effect one joint parochial account, and that all the overseers were to be considered as joint overseers of the parish at large : Held, also, that where a payment has been made by a party, at the sole request of one overseer, and without the knowledge of the others, and no demand is made upon them till after they are out of office, it is a question proper for the jury to say, whether, under these special circumstances, the party ought not to be considered as having relied upon the sole responsibility of the overseer at whose request the payment was made.

In pursuance of this order the plaintiff had paid 10*l.* 14*s.* for which the action was brought. The action was not commenced till *Hilary* term last. It appeared also that these two divisions of the parish had separate rates, and made separate payments to the poor residing in each division respectively, but at the end of the year the overseers of both divisions met together, and then, if one division was "out of purse," and the other had money in hand, the balance was paid over by the latter to the overseers of the former. The defendant was not proved to have had any knowledge of the relief ordered by *Prince*, or to have assented to it afterwards. The jury found a verdict for the plaintiff. *Russell*, by leave of the learned Judge, in last *Easter* term, obtained a rule nisi for entering a non-suit; on the ground, 1st, That these were two separate townships; and, therefore, the overseer of one could not be liable for relief ordered by the overseer of the other: and 2dly, that if all the overseers were to be taken to be overseers of the parish at large, still there was not such a privity between them as to make one liable for the contracts of the other, of which he had no knowledge; and more especially when the action was not brought till long after the year of office had expired. No claim, however, was made at the time of the trial of going to the jury on this latter point, the principal question then being as to the first point. — ABBOTT C. J. One of the questions which is now presented for our determination is, whether the present defendant is to be considered as a joint officer with *Prince* for the whole parish, or only as overseer for the division of *Morredgc and Foxt*. Now I entertain no doubt, both on the view of the learned Judge's report, and on examining the annual account-book which we have been requested to look at, that he must be considered as overseer of the whole parish; for we see there that at the end of every year the balance in the hands of the overseers of the one division is paid over to the overseers of the other. This, therefore, is in effect having one general fund for the maintenance of the poor of both divisions; and the case must, therefore, be considered as if all these four persons had been originally appointed joint overseers of the parish of *Ipstones*. Then another question is raised, whether, admitting this to be so, the defendant, under the special circumstances of this case, is chargeable for the contract made by *Prince*; and whether, from the length of time which has elapsed before the action was brought, and the defendant's being now out of office, the plaintiff ought not to be considered as having trusted to the sole responsibility of *Prince*. That, however, was a question of fact for the jury. And if it had been admitted at the trial that the defendant and *Prince* were joint overseers, the defendant's counsel might then have insisted upon this latter point. If that had been done, perhaps the plaintiff might have adduced more evidence upon this subject. I am, therefore, of opinion that this verdict ought not to be disturbed. — BAYLEY J. I am of the same opinion. Upon the first question, there is no doubt; for the *Ipstones'* accounts which are produced, state the overseers to be out of purse 104*l.* 11*s.* 4*d.*, and they add, in reduction of this account, "To a sum in hand with the *Morredgc* overseer 68*l.* 11*s.* 10*d.* leaving our balance out o pocket 35*l.* 19*s.* 6*d.*." And the *Morredgc* account, after stating their balance in hand, speaks of the sum of 68*l.* 11*s.* 10*d.* as "the balance due to the parish." This, I think, shows, beyond

all doubt, that both these accounts form together one entire parochial account, and that the subdivision of the parish is a mere matter of arrangement; and I observe also, that nearly the same persons have examined and allowed both accounts. The second question was clearly for the consideration of the jury. And the amount of this verdict being under 20*l.*, no new trial can, according to the usual rule of this Court, be granted. It may, however, be a question very proper for the determination of a jury, where a party has paid money at the request of one overseer and makes no demand upon him, nor any application to the other overseers during their year of office, whether he ought not to be considered as having abandoned his claim upon the others, and relied solely upon being repaid by the overseer, at whose request the money was advanced. That, however, was not put to the jury upon the present occasion. And, therefore, I am of opinion that this rule must be discharged. — HOLROYD J. As the second point, upon which I should have entertained considerable doubt, namely, whether, under these circumstances, the jury ought not to find that the credit was given to *Prince* only, and not to the parish, was not made at the trial, the present case is narrowed to the consideration of the first point only. As to that point, I am clearly of opinion, that although there were separate overseers and separate rates, yet that the whole money raised went as an entire fund to the maintenance of the poor of the parish at large. If so, the defendant and *Prince* must be considered as joint overseers for the parish, and the verdict is right. — BEST J. concurred. — Rule discharged.

31. *Rex v. Pinney*, M. T. 4 G. 4. — 2 B. & C. 322. — By statute 47 G. 3. sess. 2. c. 111. § 92. (local and personal act) it was enacted that the then overseers of the parish of *W.* should continue to be overseers for the remainder of the year 1807, and until two other overseers should be nominated and appointed, in the manner and at the time by law directed, to succeed them; and in *Easter* week, or within one month of *Easter*, in every year, two persons being substantial householders in the said parish, should be nominated and appointed, in the manner by law directed, to be overseers of the poor of the said parish. By an order of two justices, made on the 25th *March*, 1823, four persons therein named were appointed overseers of the poor of the parish of *W.*, and upon appeal the sessions confirmed that order. A rule nisi having been obtained for quashing the order of sessions. — ABBOTT C. J. It is a general rule of construction that affirmative words in a later statute do not repeal a former, unless there be something wholly inconsistent in the provisions of the two statutes. Lord C. B. *Comyns*, in his *Digest*, tit. *Parliament*. R. 25., lays it down that such affirmative words do not take away a former statute, unless they in sense contain a negative. Now the statute of *Elizabeth* directs that the overseers for parishes shall be four, three, or two substantial householders. The local act merely directs that the then overseers should continue in office to the end of the year, and until two others should be appointed, and that two others should be annually appointed. These words do not, in sense, contain a negative, nor is there any inconsistency between a provision authorizing the appointment of four, three, or two overseers, and another directing the appointment of two. The latter statute

A local act directed that the then overseers of the parish of *W.* should continue to be overseers for the remainder of the current year, and until two others should be appointed, and that two overseers should be appointed annually: Held, that this act did not repeal the statute 43 Eliz. c. 2. § 1., and that an appointment of four overseers for the parish of *W.* was valid.

requires absolutely that two shall be appointed, but it does not say that more than two shall not be appointed. That being so, I am of opinion that the provision of the statute of *Elizabeth* as to the appointment of overseers, is not repealed by the local act, and that the order of justices was right. — Rule discharged.

VI. At and for what time to be appointed.

See stat. 43 Eliz. c. 2. § 2.

One appointment out of two or more made on the same day may be good.

32. *Rex v. Searle, E. T. 12 Ann. EDITOR'S MSS.* — There were in this case two sets of overseers certified on the same day. It was objected that both of the appointments were for this reason void, as where two informations on a penal statute are made on the same day, both are void. *Hob. 209. Sed non allocatur*; for although in some judicial proceedings the law considers the day as entire, and knows no fractions; yet in a bond, and release, and twenty other things, that fiction does not hold, and these niceties should not be allowed to overthrow such orders.

May be appointed on a Sunday. *Sed vide pl. 39.*

33. *Rex v. Clerkenwell, E. T. 13 G. 1. Foley 4.* — THE WHOLE COURT seemed to think the appointment of overseers of the poor on a Sunday to be a good appointment; for it may be in *Easter week*, and this is the first day of the week.

An order appointing overseers in obedience to a *mandamus*, although made above a month after *Easter*, is good.

3. C. Str. 1123.
2. Sess. Cas. 140.
7 Mod. 5th edit. 896.
See 1 Roll. Abr. 513.
Salk. 686.
1 Str. 387.

34. *Rex v. Sparrow, T. T. 13 G. 2. MSS.* — A MANDAMUS (a) was issued, tested the 1st of June last, directing the justices to nominate two or more substantial householders in the parish of *St. Margaret* in *Ipswich* for overseers; to which they returned, that they had nominated three substantial householders within the said parish to be overseers for the present year. — LEE C.J. delivered the opinion of the Court: It appears by this *mandamus* that it is tested the 1st day of June, and the order is dated the 14th of June, 1739. The exception which is taken to the *mandamus*, if it take place, must quash that and the orders of appointment likewise; it arises on 43 Eliz. c. 2. which directs, that overseers shall be appointed within *Easter week*, or within one month of *Easter*; and the exception is, that this appointment is above a month after *Easter*. The Court is obliged to take notice when *Easter* was. This *mandamus* appears to have issued after the month; and the order of appointment is therefore made after the month. The question is, Whether this order, thus appearing to be above a month after *Easter*, is to be considered as a void appointment? As to the first exception, in respect to the statute directing the appointment to be within such a time, under a penalty, &c. that is to be considered as the means to oblige the justices to make the appointment within the time; but if an act be done beyond the time in which a thing is to be done by statute under a penalty, the act is not erroneous, but the party neglecting to do it according to the statute will be liable to the penalty; and so is the construction upon the statute *Westminster the second*, in the case of pledges *de prosequendo* in replevin, because the statute is under a penalty, which is a remedy against the sheriff. (b) It may properly be said, that an affirmative clause does not imply a negative against the reason and justice of a case before the Court; nay, a construction

(b) 2 Roll. Abr. 259.

(a) See *Rex v. Justices of Bedfordshire, Cald. 238*; and *Rex v. Justices of Peterborough, Cald. 238*. — Post.

that has been contrary to express negative words in a statute has been made, when a remedy to the party has required it; much more in respect to an implied negative in a statute; an instance of that appears in MAGNA CHARTA (a), where it is said, *communia placita non sequitur curiam nostram*; and yet Lord COKE (b), in his exposition of this clause, says, that though by this act the King's Bench is restrained to hold pleas of any real action, yet by a mean they may; for he says, statutes are always to be expounded that there should be no failure of justice; but rather than that should fall out, the case by construction should be excepted out of the statute, whether the statute be in the negative or affirmative; and so is the exposition of MAGNA CHARTA, c. 12. (c) By these resolutions it appears in what manner Judges have construed acts of parliament, in order to advance the remedy intended by them. The 43 Eliz. c. 2. being made for the relief of the poor, must be taken liberally; and so was the opinion of the Court in *Rex v. Rufford* (d), *ilex v. Ulloxeter* (e), and many others. Upon the foot of those authorities, I think that the best method in considering this statute, is to pursue the rules laid down in *Heydon's case* (g), where it is likewise said, that it is the duty of the Judges to make such a construction as may destroy the mischief and advance the remedy. The defect intended to be remedied by 43 Eliz. c. 2. is the want of proper officers to take care of the poor; and the remedy is a command to the justices to appoint proper persons, that is, substantial householders, within the time mentioned in the statute. It appears here, that the justices have not done their duty, in regard they have not made the appointment within the time. The act of parliament says, they shall forfeit 5*l.* a-piece for want of nomination; but the act doth not say they shall not do it at any other time, as in 12 Car. 2. c. 25. § 13. where power is given to the Lord Chancellor, &c. yearly, about the 20th of November, and the last day of December, and at no other times, to set a price on wines; so that the clause there, is not only affirmative, directing them to do it within the time, but there are also negative words that it shall not be done at any other time; therefore, as this remedy provided by the 43 Eliz. c. 2. hath not been applied within the time, and that merely by default of the justices, but since that time they have done all in their power and appointed overseers, it will be improper to put such construction on the act of parliament as would deprive the parish of the remedy prescribed by it. The instances which I before mentioned of MAGNA CHARTA, c. 11, 12. and the exposition in 2 Inst. 24, 25. are stronger than the case before us, for they were constructions to give a remedy to particular persons against express negative clauses; but here it is to give a remedy to a parish, upon an affirmative clause in the statute enforced with a penalty; and if this Court set aside the act of the justices which gives that remedy, by appointing overseers, it would be going contrary to the rules laid down by Lord COKE in *Heydon's case*, which I before took notice of. The best way of advancing this remedy will be, by considering this statute as directory to the justices, who are to follow these directions on pain of the forfeiture; and this is strengthened by the construction on words of charters which have been penned in the affirmative clause; for in the case

(a) Ch. 11.

(b) 2 Inst. 23.

(c) 2 Inst. 25.

3 Inst. 136.

(d) Post, pl. 47.

(e) Post, pl. 57.

(g) 3 Co. 7 b.

See also Hard.

22.

2 Roll. Rep.

314.

Cro. Car. 83.

Co. Lit. 381.

(a) 1 Bernard,
K.B. 19. and
1 Str. 625. 627.

of the Corporation of *Truro* (a), which goes by the name of *Stool v. Prowse*, this construction was made on the charter; the charter directed, that the aldermen were to be *annuatim eligendi*. The judgment of this Court was, that it amounted to making them annual officers, and to continue for a year; but that judgment was afterwards reversed in the Exchequer-Chamber, and their judgment was affirmed in the House of Lords; for they held, that the *annuatim eligendi* was only directory. This was the case of aldermen *annuatim eligendi*. The words of the act of parliament now in question are, "yearly to be nominated." The same construction was in the case of the sheriff of *York*, where they omitted to go to an election of a new sheriff on the day of the charter. This case is as strong for obliging the justices to make the order, though after the time; for it is suggested in the writ, that there were no overseers, which must be taken to be true; and they appoint, and therefore the necessity requires it, and it is not a fault in the parish. This statute must be considered as a command to the justices to make the appointment within the time, under the penalty; and if they do not do it, the parish and poor will have an opportunity to have the benefit of the act of parliament, by applying for a *mandamus*, which will oblige the justices to make the appointment; and as for their being for the present year, the construction is, that when they are appointed after the time, they are to continue until the next *Easter*, and then others are to be appointed; and therefore, though this appointment be not within the time mentioned in the act, yet I apprehend it is within the equity of it, for this method is only to supply the neglect of the justices: and when *Easter* comes, what is directed in a subsequent clause in the act of parliament, viz. *accounting within four days after their year*, and the appointment of others, will take place. — The order of appointment was confirmed.

See the case of
the Town of
Launceston,
1 Roll. Abr.
512.

Appointment
may be for a
whole year.
S. C. Foley, 11.
1 Sem. Cas. 42.
7 Mod. 410.
S. P. Rex v.
Searl, 10 Ann.

(a) 2 Sem. Cas.
326.

(b) Foley, 5.

An appoint-
ment on *Easter*
Wednesday,
1766, for this
present year
1766, is good.

See Rex v.
Stubbs, and
Rex v. Burder,
post, pl. 40, 41.

35. *Rex v. Jones*, H. T. 14. G. 2. — It was objected to an appointment of overseers, that the appointment was for a whole year; that the year might expire before the time came for appointing new overseers, which by the statute is to be in *Easter* week, or within one month after *Easter*; and that then there would be no overseers, in the mean time; or that the time for appointing new overseers might come round before the year was expired; and in fact did so in the present case (a). But the Court held an appointment for a year good; and cited the case of *Rex v. Great Marlow* (b), in which the Court made the same resolution; and observed, that if they did not, there was no appointment of this kind which could stand.

36. *Rex v. Helling*, E. T. 6 G. 3. Burr. 1905. — An order was made upon *Easter Wednesday* 1766, by two justices, appointing the defendants overseers of the poor of St. A. and St. G. for this present year 1766. It was objected to this order, that this appointment being made on *Easter Wednesday*, and for the year 1766, the defendants were not obliged, nor authorised, nor entitled, to continue any longer than the end of the year 1766, it not being an appointment for a year. — LORD MANSFIELD: The real objections, I take it for granted, are not before the Court. The only question before us is, Whether the order is good upon the face of it, or not? Now this order plainly means the overseers' year, and

that year is from *Easter 1765 to Easter 1766*. You must make it bad, by understanding it to mean the year of our Lord; but you cannot construe this order to be a bad one by understanding it so, for it manifestly means quite another sort of year.—WILMOT J. was silent, being a parishioner.—YATES J. was absent.—ASTON J. concurred with LORD MANSFIELD, and said, that the construction may be taken two ways, one of them making the order good, the other making it bad; he therefore should take it in a sense which would make it good.—The order was confirmed.

37. *Rex v. Butler, E. T. 8 G. 3. 1 Blac. Rep. 649.*—Motion to quash an appointment of the defendants to be overseers of the poor of the town of *Guildford in Surry*, by two corporation justices, on *Easter Monday, 20th April 1767*, there being another appointment made by the mayor and one of the county justices, of two other persons, on *Easter Sunday, 19th April 1767*. It was insisted, that the appointment made on the *Sunday*, being prior in point of time, was the only valid appointment. But it was alleged, on the other side, that this appointment being made at one o'clock in the morning, was clandestine and fraudulent.—LORD MANSFIELD: Is there any determination that an appointment on *Sunday* is good?—ASTON J. I have a note from MR. JUSTICE BATHURST of *Rex v. Clerkenwell* (a), that an appointment made on *Easter Sunday* shall be good, it being a work of charity.—LORD MANSFIELD: Notwithstanding that reason, I should think that an appointment on a *Sunday* is *prima facie* clandestine and bad.—The rule was discharged.

The appointment of overseers on *Easter Sunday* is *prima facie* clandestine and bad. See *vide ante*, pl. 33.

(a) *Ante*, pl. 33.

38. *Rex v. Justices of Bridgewater, E. T. 9 G. 3.*—Six appointments of overseers of the poor, made by two sets of Justices for *Bridgewater*, were removed into the Court of King's Bench. It appeared that two had been made on *Easter Sunday*, two on *Monday*, and two on *Tuesday*, the usual day for making appointments in that town; but which were first made on the respective days did not appear.—THE COURT, seeing no reason to presume that those made by the defendants were subsequent to those made by the other justices, declared, that if their appointment made on *Sunday bond fide* was prior to that made by the others on the same day, it was good: therefore an affidavit of priority was necessary to induce the Court to quash either.

But an appointment made, *bond fide* and without collusion, on a *Sunday*, is good.

39. *Rex v. Overseers of Bridgewater, T. T. 14 G. 3. Comp. 139.*—Upon showing cause why several appointments of overseers should not be quashed, the case appeared to be a contest between two adverse sets of borough justices. Each set met before midnight of *Easter-eve*; and each begun making their appointments of overseers the instant the clock had struck twelve, and so kept on renewing the same appointments for an hour or two. But one set of them made a fresh appointment at eight o'clock on the *Sunday morning*, supposing that there would be a contest concerning the priority of those appointments which were made soon after midnight, and perhaps all of them bad. The case of *Swan v. Broome* was cited (a), to prove the appointments good.—LORD

Sunday is not a proper day for making appointments of overseers.

(a) This was a writ of error on a common recovery suffered in *C. B.* viz. that the day of the return of the writ of summons was on a *Sunday*, on which day the vouches died; and the Judges, after great argument, were unanimous,

that by law a valid judgment could not possibly be given on a return-day, being *Sunday*; and this judgment was confirmed on a writ of error to the House of Lords. 3 Burr. 1595.

MANSFIELD: The conduct of the Justices in this case is a shameful prostitution and abuse of their office for election purposes; and I wish any person could be found who would undertake to prosecute both parties. It would have been more for the interest of either side to have waited for a legal appointment on the *Monday*. I do not know that there is any authority which says that an appointment made on a *Sunday* is good; but it certainly is not a day for such purposes as these; and therefore I will not give my sanction to any of the appointments. Let all the appointments be set aside, and a *mandamus* be directed to the Justices to make a new appointment; and let the mayor give two days' notice of the time and place of meeting for such new appointments.—The three other Judges concurred.—*N. B.* The matter was afterwards agreed between the parties.

An appointment on 6th October for one year next ensuing the date thereof is good.

(a) *Ante*, pl. 34.

For such an appointment must be understood to be "for the overseers' year."

After the appointment of four overseers for a parish, by the magistrates at one meeting, they are *functi officio*, and no other magistrates can afterwards upon a claim of one to be exempted, appoint another.

40. *Rex v. Stubbs*, *E. T.* 28 G. 3. 2 *T. R.* 395.—*Alice Stubbs*, widow, *T. M.*, and *J. K.*, were, on the 6th October 1787, appointed overseers of the poor for the township of the monastery of *R. A.*, for one year next ensuing the date thereof. On a case stated, an objection was taken to this form of appointment; and the Court of King's Bench at first thought the objection fatal, because it exceeded the time mentioned in the 43 *Eliz. c. 2.*; but, on consideration, they now over-ruled it on the authority of the case of *Rex v. Sparrow* (a), as it might be taken to mean only the overseer's year.

41. *Rex v. Burder*, *T. T.* 32 G. 3. 4 *T. R.* 778.—On the 26th April 1791, *Burder* and another were appointed by two justices of the county of *Essex*, to be overseers of the poor of the parish of *F.*, for one year then next ensuing. On a demurrer to an indictment for not taking upon him the said office, one objection was, that he was appointed for the "year then next ensuing," not for "the overseers' year," or for "a year" or "until another should be appointed," so that he might continue in office longer than the regular time.—But THE COURT thought there was no weight in the objection; for that an appointment "for the year then next ensuing" must be understood to be "for the overseers' year:—And judgment was given for the King.

42. *Rex v. Great Marlow*, *H. T.* 42 G. 3. 2 *East*, 244.—A rule was granted in the last term, calling upon the prosecutor to show cause why a certain warrant of appointment of *J. F.* to be one of the overseers of the poor of the parish of *Great Marlow*, in the county of *Bucks*, should not be quashed, upon notice of the rule to be given to the said *J. F.* This was obtained on reading the said warrant of appointment returned by *certiorari* into this court, and also upon the affidavits of *H. G.* and others; which stated that *Sir W. C.* and the *Rev. T. P.*, two justices of the peace for the said county, met at *Great Marlow* on the 18th of April last, and did then and there, by warrant under their hands and seals, appoint *J. W.*, *J. J.*, *J. G.*, and *R. J. O.*, to be overseers of the poor of the said parish. That on the 2d of May last another instrument, purporting to be a warrant appointing *J. F.* overseer of the said parish, was signed by *T. W.* Esq. another magistrate of the county, and on the 25th of the same month, was signed by the said *T. P.* (one of the magistrates first mentioned), who was not present when the said *T. W.* signed the same; nor was the said *T. W.* present when the said *T. P.* signed it. In answer to

the rule it was sworn that the two last-mentioned magistrates met at *Great Marlow* on the 2d *May*, when *J. G.*, one of the overseers first appointed, came before them, claiming to be exempted from serving parish offices by virtue of a certain certificate of an appointment (annexed to the affidavit), dated 6th *March* 1795, whereby it appeared that he had been sworn one of the yeomen in ordinary of His Majesty's body guard. That the two magistrates, conceiving it right to exempt him, did accordingly do so; and in his stead did proceed to appoint the said *J. F.*, a substantial householder of the parish, who was agreed by the other overseers and several other parishioners present at the meeting to be a proper person. That the appointment was accordingly directed to be made out, and the said *T. W.* signed the same at the time, conceiving that it was also signed at the same time by the other magistrate: and that if it were not so done, it was by the mistake of the clerk. That at the said meeting *J. G.* declared that he had not and would not act as overseer under the first appointment, conceiving himself to be exempted. In support of the rule it was said, that the magistrates had no authority, after the first appointment made of four overseers, to appoint another, except in the three cases provided for by the stat. 17 *Geo. 3. c. 38. § 3.* namely, the death, removal, or insolvency of one of the overseers; neither of which had happened here. And that objection might be taken here on removal of the appointment by *certiorari*, without appealing to the sessions in the first instance. — GROSE J. When the first appointment was made, on the 18th of *April*, of four overseers, all further jurisdiction of the magistrates in that respect was at an end. It was not competent for other magistrates to make a new appointment in cases not authorized by the statute. Then again, both the magistrates ought to have been present when the appointment was executed: instead of which, many days elapsed between the signature of the one and the other, and they were not together when the act was done. This is essentially necessary to be observed, and much inconvenience may ensue from a contrary rule. Therefore the appointment appearing to have been illegally made must be quashed. — LAWRENCE J. The magistrates who first met did appoint four persons to be overseers of the poor for the parish: that one of the persons so appointed afterwards applied at a subsequent meeting of magistrates to be discharged on the ground of an exemption claimed by him. But, after the former appointment, it was not competent to the other magistrates to receive his excuse; but the party should have appealed to the sessions, who might have allowed his excuse. But till that were done he became overseer completely by the appointment under the hand and seal of the magistrates, and he might have been indicted for not executing the office. — LE BLANC J. The first appointment being good, all was at an end, and the other magistrates had no jurisdiction to make another appointment.

VII. *Of and for what Place.*

See stat. 13 & 14 *Car. 2. c. 12.*

43. *Hilton v. Pawle*, *H. T. 3 Car. 1. Cro. Car. 92.* — In trespass for taking a saddle of the plaintiff's at *S.*, a special verdict found that the parish of *H.* is an ancient rectory and parish;

Separate overseers shall be appointed for an ancient vil-

lage need and reputed as a parish before and at the time of 43 Eliz. c. 2. although it be parcel of another parish, which was an ancient rectory. S. C. Jones, 356. Lit. Rep. 72. Hutt. 93. 9 Bl. Rep. 246.

that the village of *S.* is an ancient village, and parcel of the rectory of *H.*; that from the time of *Henry the Sixth* there had been a church in the village of *S.*, which, during all the said times, had been used and reputed as a parish; that the inhabitants of *S.* during the said time had all parochial rites, and churchwardens; and that the said village of *S.* is distant from *H.* about two miles. The question was, Whether *S.* be such a parish as by the statute 43 Eliz. c. 2. is chargeable to the maintaining their own poor?—THE COURT delivered their opinions *seriatim* for the plaintiff, that this is such a parish within the statute of 43 Eliz. c. 2. as is chargeable for the relief of the poor of *S.*, and not for the poor of *H.*; for being found that it was a church in the time of *Henry the Sixth*, and that it then was and ever since had been reputed a parish, and not in the negative, that it was not a parish before, it may be well intended to be a parish before, and it doth not exclude that it was not before time whereof, &c.; and although it should not be so intended, yet being found that it was a church then, and that there were churchwardens there, it is a parish within the statute, although it be but a reputative parish; for being in use so long before the statute, and at the time of the statute, the statute appoints, "that the churchwardens and three "or four overseers of the poor joined with them shall," &c.; and no churchwardens of *H.* are churchwardens of *S.*, and by consequence have nothing to do there; and the churchwardens of *S.* are only to meddle with the church there, and by consequence with the poor of the parish: and the statute hath an intention to confine the relief to parishes then *in esse*, and that every parish should meddle with its proper village, and their poor are to be provided for there, and not elsewhere. — Judgment for plaintiff.

Separate overseers shall be appointed for a place that previous to the 43 Eliz. c. 2. was a parish by reputation, although it was originally a vill to the adjacent parish.

See Hob. 66. 4 Mod. 158. Ray. 477. Holt, 575.

44. *Nicholas v. Walker*, H. T. 10 Car. 1. Cro. Car. 394. — On a special verdict it was found, that anciently the village of *T.* was parcel of the parish of *H.*; that there was not any legal act to sever the said vill from the parish of *H.*; that *modo et ante tempus cuius*, &c. the tithes of *T.* were paid to the parson of *H.*; that the parson of *H.* used always to find a curate at *T.*; that there is no parson at *T.*; that for threescore years past and more, and at the time of the making of the statute of 43 Eliz. c. 2. *et semper exinde usque hunc diem, dicta villa de T. communitur reputata fuit esse parochia de se, et per totum idem tempus constabularios, guardianos ecclesiæ, et supradvisores pauperum, dicta villa de T. habere consueverunt per electionem inhabitantium ibidem*; that for all the said time, rates, assessments, and levies had been made there by them, for the relief of the poor of *T.*; which rates, during all the said time, had been used to be levied by their proper officers for the relief of the poor there, without any paying to the poor of *H.*, or joining in any assessment with the town of *H.*; that the church of *T.*, during all that time, have had all parochial rights; and that the inhabitants of *T.* had not used all that time to contribute to the reparation of the church of *H.*, but to the reparation of their own proper church and chapel only. — THE COURT, after argument at the bar, resolved, that judgment ought to be given for the plaintiff; for *T.* being a parish in reputation so long before and after the statute, and at the time of the statute made, it shall not be now for this purpose charged by *H.*, but it shall be charged by itself; and for their poor only.

— And they relied upon a judgment given in the case of *Hilton v. Pawle*.

45. *Rudd v. Foster*, M. T. 4 W. & M. 4 Mod. 157. — Replevin for taking of a gelding. The defendant justified by virtue of the statute 43 Eliz. c. 2. for money due upon the *poor-tax*. The parties being at issue, it was tried at the bar. The question was, Whether the vill of S. was in the parish of B. or not? The *poor's rate* was admitted; and the evidence to prove it to be in that parish was, that there were but two churchwardens and two overseers of the poor, and that marriages, burials, and christenings, and all other parochial rites, were done at B., and that the inhabitants of the vill of S. did contribute to the repairs of the church of B. On the other side, to prove that S. was a reputed parish by itself at the time of the making of this statute, this evidence was given: viz. In the reign of *Edward the Third* there was a public chapel there, where the people went to hear mass, and that divine service was read in that chapel at the time of the making of this statute. Then it was proved, that a rate was made there in the year 1654; and that formerly they had distinct constables, and repaired their own highways till the year 1634; and then the difference between them was settled by the Judges in their circuit. They would have this like the case between the parish of *Totteridge* and *Hatfield* (a), which was a special verdict upon this statute: The plaintiff lived in T. and had no lands in H., but had lands where he lived; he was rated to the poor of H.; but because at the time of the making the statute T. was a-reputative parish, and had distinct constables, churchwardens, and overseers of the poor, and made their own rates and assessments, which were levied by their own officers, for this reason that was held to be a distinct parish from H. But S. was not so much as a parish in reputation at the time of the making of the act, and so not like that case; for all that was proved was, that they had made rates since the statute, and had a chapel before; but making rates will not make it a parish without all other parochial rites. And therefore IT WAS HELD to be a vill in the parish of B.

46. *Dolting v. Stokelane*, H. T. 11 Ann. Fort. 219. — PARKER C. J. The difficulty arises on 13 & 14 Car. 2. c. 12. §. 21, 22. The first QUESTION is, Whether this act be general and extends to all the counties of *England*? I think it is a mistake to say that the clause extends to no other counties than those named, because the words are express; for besides the counties there particularly named, it goes on and says, and many other counties in *England* and *Wales*; so *Wales* must be excluded if it be confined to the counties named, so it must extend to all counties. The second QUESTION, If it be general, is whether it be confined to towns and villages, or may extend to all extraparochial places that are not so? It is recited indeed, that by reason of the largeness of the parishes in those counties named and others, the benefit of 43 Eliz. could not be had; but it does not say, that those towns and villages must be in parishes, but that the poor within every township or village within the counties aforesaid shall be provided for within the township and village wherein he inhabits, or wherein he was last lawfully settled; which shows that it extends to all the towns and villages in any county, if they cannot

Overseers cannot be appointed for a vill which has performed its parochial rites in the parish, although it had a chapel of its own before the 43 Eliz. and has been separately rated to the poor subsequent to the passing of that statute.

(a) *Ante*, pl. 44.

The statute 13 & 14 Car. 2. c. 12. is general, and extends to all counties; but a pauper cannot be sent by virtue of it to an extraparochial place, unless it be a town or vill.

See 2 Leo. 149. Same point determined in the case of *Clifton v. Chinkam*, Andr. 514. See 3 T. R. 748.

reap the benefit of 43 *Eliz.*; therefore extraparochial places, though perhaps not within the direct view of the legislators, yet are within the express words, "the poor in every town and village;" and the justices may in towns and villages execute all the power that they have within any parish or parishes by 43 *Eliz.*; the consequence of which is, they may be settled in these places, and may be removed from them; and though there were no officers before, yet by this clause the justices may appoint standing overseers in these places to take care of the poor. However this order of Sessions is nought, because this is not within a town or village, and therefore though extraparochial towns and vills are within this law, yet not other places which are neither towns nor vills. If it were said at *Brewcomb's Lodge* generally, and no more, that might be intended a vill; but this is said to be a certain extraparochial place called *Brewcomb's Lodge*; so that this may be but one house, for it must consist of several houses and inhabitants; so that it not appearing to be any more than one single house, it is not within the act of parliament, and so the order ought to be quashed. The last legal settlement must be expounded, such settlement as can by this act, &c. it is of consequence whether he can be sent back to this extraparochial place. Suppose one go and live as a servant in an extraparochial place, being neither town nor village, would this discharge him of all other settlements? As he shall not stay where he is not settled, so he must go where he is last legally settled where he could be sent; last is last in law, and an extraparochial place is the same as if it were in *Ireland*.

See *Rex v. St. Peter's*, vol. 2.

But overseers may be appointed for extraparochial places that are vills.

S. C. 8 Mod.
39. Fort. 321.
5 Mod. 273.
1 Stra. 510.
S. P. Dolking
v. Stokelane,
ante, pl. 46.

47. *Rex v. Rufford*, E. T. 8 G. 1. Str. 512. — A MANDAMUS stated that it appeared on the complaint of divers inhabitants of the parish of *D.*, in the county of *L.*, that there are within the vill of *R.* divers substantial freeholders able to contribute to the maintenance of the poor; that there are no churchwardens or overseers to make a rate; and that there are poor unprovided for; and commanded the justices of the county to appoint overseers. They returned that the vill of *R.* was part of no parish, but had, time out of mind, been *extraparochial*, without church, chapel, or parochial rights; that there had never been overseers, and that therefore they could not appoint. — THE COURT was of opinion, that *extraparochial places* are within the words of the statute; for the justices of the peace, by the general words, have power to name overseers in all parishes, which must extend as well to *extraparochial places*, as to all parishes in general; and no subsequent words shall controul the general words in the enacting part; and certainly all the poor acts shall be construed to extend to such places, as well as to other parishes, when they are within the same mischief, and shall be subject to the controul of the justices of the peace; but the penalty for not meeting in the church shall never be inflicted on the overseers of the poor, because the inhabitants of *extraparochial places* have no church to meet in. Most of the forests in *England* are extraparochial, and so is *Christ Church in Oxford*, but they ought to maintain their own poor. This is a vill consisting of several inhabitants, and so is within the provision of the statute 13 & 14 Car. 2. c. 12. for a vill in a county, not therein particularly mentioned, will be within the remedy thereby provided; for all cases within the reason are

within the remedy of the law. There is no doubt but justices have the same power to appoint overseers in towns and vills, though extraparochial, as in parishes; and this has been settled. The word "parish" is not in the body of statute 43 Eliz. c. 2. but only in the preamble. — A *peremptory mandamus* was accordingly awarded.

48. *Rex v. Denham, E. T. 8 G. 2. Burr. S. C. 35.* — The pauper lived several years in a farm in *Southwold-Park*, which is stated in the order to be an *extraparochial place*, consisting of two houses and about three hundred acres of land only, belonging to and in the occupation of different persons, and of the value of about 300*l. per ann.*; and that it did not appear, that in the said extraparochial place there are or ever were any persons appointed to receive or provide for the poor happening therein. — LORD HANDWICKS: Before the case of *Dolting v. Stokelane* (a), it had been generally taken that the justices had not power to send paupers to extraparochial places where they were no overseers of the poor. The substance of the opinion of the Court in that case rested upon this limitation, that the place should amount to the notion of a township or village. By the 43 Eliz. c. 2. there must be two overseers at least, but when the whole parish consists of two houses, the whole parish must be perpetual overseers, and be chosen by nobody, and have jurisdiction over nobody but themselves, if this place may be called a township or village. — PAGE J. was also of opinion, that a single house or two houses cannot amount to the notion of a town or village. If it had been formerly a town, if the houses were in fact decayed and gone, it would cease to be a town or village. — LEE J. observed, that the notion of a village, according to the ancient law, is a tithing consisting of ten families; that according to the modern notion it is a place that has a constable (b); that it ought at least to have the reputation of a vill or town; and that Lord Coke's definition of a vill, "*ex pluribus mansionibus vicinata*," must mean more than two houses. — And the order was affirmed (c).

49. *Rex v. Grafton, E. T. 10 G. 2. Burr. S. C. 101.* — The manor of G. is an extraparochial place, once consisting of a capital mansion-house, and three keepers' lodges in the park adjoining; the park being since converted into farms, of which there are five, with each a dwelling-house, including the old lodges, and in the occupation of five different tenants, and never had an overseer till one was appointed for the purpose of making a removal. — This was held (but without defence) not to be a vill or town.

50. *Rex v. Welbeck, T. T. 13 & 14 G. 2. MSS.* — A MANDAMUS issued to the justices of the peace for the county of N., suggesting, that there were several householders and farmers inhabiting and residing within the vill of W. able to provide for their poor, and that there was no overseer at present of the said vill; and therefore commanding them to nominate and appoint overseers of the poor for the said vill. The justices returned, that the place called W. was an extraparochial place; that it was not, nor ever had been a township or village, nor had ever been reputed to be a township or village; and that therefore they could not appoint. — LEE C. J. It is certain that two houses will not make a

But an extraparochial place, consisting only of two houses, is not to be considered a township or vill.
S. C. Stra.
1040. 2 Sess. Cases, 250.
Foley, 14.
Cald. 169.
B. R. H. 119.
5 Burr. 1391.
(c) *Ante*, pl. 46.

(b) 1 Salk. 176.
2 Hawk. 86.
Lord Ray. 546.
5 Mod. 81.
Cald. 169.

A nobleman's seat in an extraparochial place, converted into five farms, held not to be a vill.
S. C. Str. 1071.
See 4 Mod. 157.
and T. Ray. 477.

What shall be considered a vill.

S. C. 2 Sess. Cases, 198.
2 Stra. 1143.

(c) This case was determined upon the authority of *Rex v. Inhabitants of Belvoir Castle*, M. T. 2 G. 2. B. R.

a) *Ante*, pl. 48.

b) 3 *Sess. Cas.*

11.

c) *Ante*, pl. 49.

(d) *Ante*, pl. 47.

Burr. S.C.
171. 570.
Cald. 241.
notis.

Justices ought
not to appoint
overseers for
separate parts
of a parish,
unless it be
necessary.
S.C. Sayer,
145.

village, as was resolved in *Rex v. Denham* (a), and *Rex v. Belvoir Castle* (b), where there were only a castle and an alehouse; and it was held not to be a village. The case of *Stokeprior v. Graf-ton* (c) was upon an order of settlement, which stated, that there was an ancient capital messuage, with three lodges belonging to it, which at that time consisted of five farms; and that they had overseers of the poor, and a poor person was sent thither; and the question was, Whether he was legally sent thither, it being an extraparochial place? There was a rule to show cause, and that was made absolute; but it was without any argument or cause shown. This is most certain, that where the place may be considered as a township or village, it is a place for which overseers may be appointed. If there be no such place as the village of *W.*, I think it is an answer to this writ to say, as they have done here, that it never was nor is a vill, nor ever was nor is reputed to be a village. The case of *Rex v. Rufford* (d) was not parallel to this; for there it was returned, that the vill of *R.* was not part of the parish of *D.*, had no church, and was an extraparochial place. Whether it was part of the parish or any other was not material; for it was admitted to be a vill, and therefore the *mandamus* was granted. The only question here is, Whether this is not to be considered as a direct answer to the writ? It has not indeed said, that there are not several householders and farmers therein; but as the writ directs that overseers shall be appointed for the vill, and they have returned that it is not a vill, I think it is an answer to the writ; and if this return be false, it is a fact that may be tried by an information. PAGE and CHAPPLE Js. *accord*. PROBYN J. *contra*. I have some doubt, whether the whole supposal of the writ should not be either admitted or denied: whether it be called a vill or a township is not material; for if there are houses sufficient in that place to make it a village, though it be called a hamlet, or by any other name, the Court will consider it as a vill. The material part of the suggestion of the writ is, that there are several householders and farmers inhabiting the village; and the Court may take upon them to judge, whether two, three, or more houses will make a village for this purpose: it is a place that has several inhabitants capable of bearing offices, and maintaining their poor. If this be a material part of the writ, as I apprehend it is, then it is not answered by the return; for that reason I think it is insufficient. — *Cur. advisare vult*. — MR. JUSTICE PROBYN afterwards declared, he was then satisfied that the writ was materially answered by returning that it was not a vill; and thereupon the return was allowed by the whole Court.

51. *Rex v. Justices of Middlesex*, T. T. 27 & 28 G. 2. MSS. — On a rule to show cause, why a *mandamus* should not go to compel the justices to appoint overseers for the township of *K*, it appeared by the affidavit, that this parish had always had two overseers; that a rate had been made as one rate for the whole parish; that their appointments had been for the whole parish; but that each overseer had collected and paid within his own division; and that at the end of the year if there was a surplus in either of their hands, so much of it was paid over into the hands of the other overseer as to make them both equal: they had one workhouse; and one overseer looked over it one week, and the other the next. — THE COURT: If this be a case that falls within the 13 &

14 Car. 2. c. 12. a *mandamus* is a writ of right, and the Court must grant it. It has been determined, that this statute is not to be confined to the counties mentioned in the statute. (a) This has never been considered as a separate parish: the two overseers have been usually appointed for the whole parish. What is declared from the *affidavit* shows that they can do very well under the 43 Eliz. c. 2. without calling in aid the 13 & 14 Car. 2. c. 12.; for they have two overseers, and the methods they have used to collect their rates, and to take care of their poor, is very just and reasonable. To bring this within the statute, they must show this to be distinct vill. We expected they would have shown that they had had separate overseers; that they had maintained their own poor separately; and that they had had a separate rate. — The rule was discharged.

(a) *Vide ante*,
Dolting v.
Stokelane, pl.
46.

52. *Rex v. Severn, E. T.* 29 G. 2. *Sayer*, 278. — The defendants were appointed overseers of the poor within the *precinct of the Tower*, otherwise called the parish of *St. P.* within His Majesty's Tower of *L.* — DENNISON J. We are of opinion, that the appointment is void. It expressly appears to be an appointment under 43 Eliz. c. 2., but it is not good either under that statute, or under the 13 & 14 Car. 2. c. 12. The former of these statutes only gives a power of appointing overseers of the poor in *parishes*; and this power is by the latter statute only extended to *townships and vills*. It has been said, that as the place is called "the *parish of St. P.*, as well as *precinct of the Tower*," it is a parish by reputation; but although a place may be a parish by reputation, and although overseers of the poor may be appointed for such place, yet an appointment of overseers for such place will be bad, unless the place be therein expressly called a *parish*. In the present case the description of the place is, "*Precinct within the Tower*;" for the words, "*Parish of St. Peter's ad Vincula within His Majesty's Tower of London*," are under an "*otherwise called*;" and the rule in such case is, that the name or description which precedes an "*otherwise called*," is always to be considered as the true name or description, and not the name or description which follows. It has been said, that although the place be not a parish, the Court may intend that it is a township or vill, within the meaning of the 13 & 14 Car. 2. c. 12.; but as it is not expressly called a township or vill in the appointment, the Court ought not to intend that it is a township or vill, in order to make an appointment good which is not warranted by that statute. — And the rule for quashing the appointment was accordingly made absolute.

Separate overseers cannot be appointed for a precinct.

53. *Rex v. Showler, T. T.* 3 G. 3. 3 Burr. 1391. — Two justices of *L.* appointed *T. S.* and *J. A.*, being substantial householders of the township or village of *H.*, in the said parts, to be overseers of the poor of the township or village of *H.* for the year next ensuing. The Sessions confirmed, and stated a case: — *J. A.* was a day-labourer: the place called *H.* consisted of a capital messuage, in which *T. S.* with all his family dwelt, and of two small ancient cottages, and of one other small cottage lately built: all the cottages were let along with the capital messuage, and the farm thereunto belonging, to *S.*; and of another tenement, part of the capital messuage; and all of them inhabited by families: one of the cottages was inhabited by *A.* and his family; another of the cottages by another day-labourer and his family; the other of the

Overseers cannot be appointed in a place which has never been, or reputed to be, a vill. To constitute a vill for this purpose, there must be a competent number of substantial householders.
S. C. 1 Bl.
Rep. 419.

cottages by a shepherd and his family; and the tenement, part of the capital messuage, by a poor widow and her three children; all which occupiers of the cottages, and of the tenement, part of the capital messuage, were under-tenants to T. S. The Sessions adjudged H. to be a village "or township, and confirmed the appointment." It was objected, that the facts stated show that this place is neither a township nor a village. — THE COURT were clearly and unanimously of opinion, that the appointment of both the persons ought to be discharged: — LORD MANSFIELD observed, that by this method a place might be made a village which in fact was not so, and the inhabitants of it might, by this contrivance, withdraw themselves from contributing towards the support of the poor of their parish. If it be really a vill, you may make another appointment. — WILMOT J. cited, and laid a good deal of stress upon the case of *Rex v. Welbeck (a)*, which DENNISON J. also said, he very well remembered. It was a *mandamus* to appoint overseers in and for the village of W.; and the return was, that it was extraparochial, and is not, nor was, nor is or ever was reputed to be, a village or township. Both orders quashed.

(a) *Ante*, pl. 50.

Justices of the peace cannot divide a parish and appoint separate overseers, except it appear there was an inability in the parish to have the benefit of the 43 Eliz. c. 2.

(b) See *Rex v. Watson*, pl. 216.

54. *Peart v. Westgarth (b)*, H. T. 5 G. 3. Burr. 1510. — The case stated — That from the 43 Eliz. to 9 Geo. 1. the parish of S. had had one joint appointment of overseers of the poor; that during all that time the poor there were jointly relieved and maintained by entire and general rates upon the whole parish; that during the said time there were four churchwardens and four overseers of the poor; that the four overseers were respectively nominated out of each of the four quarters or districts in the parish, called *F. quarter*, *N. quarter*, *P. quarter*, and *S. quarter*, viz. one out of each of these quarters; that in each quarter there was one churchwarden, and one of the overseers, who collected the poor rates in the quarter or district wherein they respectively resided, but the money collected by the several churchwardens and overseers was levied under one entire assessment upon the whole parish, and carried to one general fund, and was applied to the joint relief of all the poor of the parish: that the parish is twenty miles in length, from east to west, and eight miles, at a medium, in breadth; that the first quarter is one distinct constabulary, the *F. quarter* one, and the *S. quarter* one; that the *N. quarter* consists of three constabularies; but that these three constabularies compose, and are considered as one quarter only: that on 17th July, 9 Geo. 1. at the general quarter sessions for the county of D., it was ordered, that the several townships or constabularies of S., F., N., E. G., and W. G., should separately maintain their own proper poor: that this order of Sessions was thus prefaced: — "FORASMUCH as this Court has been moved by and on the behalf of the township of S., and also of the several townships and constabularies of F., N., and E. G., and W. G., within the parish of S., that each of them should and might maintain their respective and proper poor, distinctly and separately from each other, and from any other part of the parish of S.; but the said motion being opposed by the constabulary of F. quarter, within the said parish of S., but not by any other part of the said parish: Now after hearing counsel, IT IS ORDERED (*ut supra*), unless cause be shown to the contrary by the constabulary of F. quarter at the next sessions:" that from that time there have been separate appoint-

ments of overseers of the poor for each of the four quarters or districts, and each of the said quarters maintained their own poor separately, excepting that about twelve years ago two townships or constaberies, called *B.* and *F.*, within *N. quarter*, separated themselves from the rest of that quarter, and had ever since had separate overseers, and maintained their own poor separately. The case further stated, that orders of removal had, from time to time, been made, since the year 1729 to the year 1761 (exclusive of each of these years), for the removal of poor persons from one of the said quarters or districts to another, and that appeals had been made by one quarter against another concerning orders of justices relating to the poor of each. The question was, Whether the several places or districts were one entire parish, or whether the said several districts being divided into six separate constaberies, constituted four distinct and separate townships or villages within the meaning of the 13 & 14 *Car. 2. c. 12.*? — THE COURT upon this first argument thought the justices had no power to divide parishes, or to fritter parishes into pieces, as MR. JUSTICE WILMOT expressed himself. It was argued a second time; after which LORD MANSFIELD said, he had no doubt upon the first argument. The policy of this law of 13 & 14 *Car. 2. c. 12.* was mistaken; it went upon a wrong principle; the divisions ought rather to be enlarged than diminished. As to the question itself, consider, 1st, What was done? 2dly, Upon what foundation? It ought to appear that there was an inability in the parish to have the benefit of the act of 43 *Eliz.* Now here no such inability appears, but quite the contrary for a great number of years, so that there is no foundation for the division. The acquiescence under it was upon a false notion, that the Sessions had such a power, which they had not; and there is no inconvenience in setting right this wrong usage, which has obtained for forty years. In the case of *Kentish Town* (a), all the judges held, that the foundation of such a division of a parish must be an inability of having the benefit of 43 *Eliz. c. 2.* Here the foundation is wanting, therefore judgment must be for the plaintiff. — MR. JUSTICE WILMOT also thought, that the larger the circle the better, therefore it would be more proper to enlarge than to lessen the division. The statute of 13 & 14 *Car. 2. c. 12.* goes upon this basis, that the parish is so large as that it cannot have the benefit of the 43 *Eliz. c. 2.* This therefore is a fact that ought to be quite clear and certain: whereas, on the contrary, it appears in the present case, that this parish actually had that benefit from 1602 to 1723, above one hundred and twenty years. The Sessions do not seem to have had any sort of power to make such an order, therefore their order is a mere nullity; it was not made upon any appeal, but upon a motion made on behalf of some of the quarters, and opposed by another. The subsequent usage for forty years cannot vary the right; for we cannot presume that *omnia rite acta sunt*, because we see that it was founded upon this order of Sessions; and it does not appear, that the parish is so large that it cannot have the benefit of 43 *Eliz. c. 2.*; therefore they ought to appoint running overseers over the whole parish.

(a) *Ante*, pl. 51.

55. *Rex v. Kirkby Stephen*, T. T. 10 G. 3. Burr. S. C. 664. Where a parish is divided into separate townships, who maintain their respective poor, and have separate

ships which have separate overseers, each township, with respect to its poor, is to be considered as a distinct parish, and within the meaning of 13 & 14 Car. 2. c. 12.

2 Salk. 489.

Separate overseers shall not be appointed for a hamlet situate within a parish, although it consist only of one house, and has never been rated to the poor.

overseers. The township of *K. S.* and the township of *W.* are two of these ten townships. The pauper, *W. G.*, was removed from *N.* by an original order directed to the officers of the parish of *K. S.*, and adjudging his settlement to be in that parish, and removing him to that parish, and was brought, together with this order, by the overseers of *N.*, and delivered to the overseer of the township of *K. S.*; but neither the parish of *K. S.*, nor the township of *K. S.*, appealed from the order; and the pauper remained in *K. S.*, and was maintained by a sister in the township of *K. S.*, for near a year and a half; when, his sister dying, he asked relief of the township of *K. S.*, who thereupon got him removed, by an order of two justices, to the township of *W.*; which order was quashed upon appeal, subject to the opinion of THE COURT OF KING'S BENCH upon the above-recited state of the case:—LORD MANSFIELD: The original order, made for the removal from *N.* to the parish of *K. S.*, must mean the township of *K. S.*: the township was as a parish for this purpose of a removal to it; the poor within the parish not being maintained by the whole parish, but by the particular townships to which they respectively belong. The township of *K. S.* ought, in this case, to have appealed: they could not get rid of this order but by appealing; and if they had appealed, the truth might have appeared; and when the facts had appeared to the justices, upon the whole truth being disclosed, the paupers might, in the end of the inquiry, have been sent to *W.*—And, by THE COURT, the rule was discharged, and the order of Sessions affirmed.

56. *Res v. Tamworth, T. T.* 17 G. 3. *Cald.* 28.—The case: *T. G.*, the pauper, was legally settled in the hamlet of *B. and G.*; and afterwards was hired for a year, and served that year at *S.*, a hamlet consisting of one house only, and between three and four hundred acres of land: the hamlet of *S.* never contributed towards the relief of the poor of the parish of *T.*, nor had been assessed thereto, but had always been assessed, and had always paid to the support of the parish church of *T.*, and no overseer or overseers of the poor ever had been appointed for the hamlet of *S.*; and the hamlet lies without the limits and jurisdiction of the borough of *T.*, but is within the parish of *T.*, which not only lies partly in the county of *W.*, and partly in the county of *S.*, but is a part thereof within the limits and jurisdiction of the borough of *T.*, and part thereof without the said limits and jurisdiction.—Two justices adjudged the settlement of *G.* to be at *S.*, and accordingly ordered the overseers of the parish of *T.* to receive him: and the Sessions on appeal, confirmed the order.—It was contended in support of these orders, that the circumstance of the hamlet never having contributed towards those burthens, which the law threw upon the whole parish, was perfectly immaterial; and that this place could never be considered as a *vill*, within the meaning of 13 & 14 Car. 1 c. 12., there being here only one house, and no overseers. On the other side it was insisted, that this was a distinct vill, independent of the parish of *T.*, and to which no pauper could be sent till it had officers duly appointed.—LORD MANSFIELD: There is no doubt at all. The place is averred to be within the parish where the hiring and service were had and performed; and it is no township or vill within the statute of 13 & 14 Car. 2. c. 12. where officers are appointed; and therefore the justices could not

remove the pauper there. The state of places as to the number of houses may have been different in different cases, but here are no overseers, no separate economy. The adjudication is to S., as part of the parish of T. — ASTON J. This place is neither extra-parochial nor a vill. In the case cited of the manor of G.; it was held no vill, though it had been converted into five dwelling-houses and farms, and was occupied by five several tenants. — WILLIS and ASKHURST concurring, rule discharged, and both orders affirmed.

57. *Rex v. Uttoxeter*, E. T. 20 G. 3. Doug. 246. Cald. 84. — On a rule to show cause why an order of Sessions confirming separate appointments of overseers of the poor of the township of U., and three other divisions of the parish of U. in S., should not be quashed, the special case stated by the Sessions appeared to be as follows:—The parish of U. is five miles in length, and five in breadth, and contains the townships of U., C., D., S., and L. The town of U. is a large market-town, much burthened with poor. The townships of C., D., S., and L. are in general divided into considerable farms. The said townships were and are one entire parish, and did, till the year 1790, jointly relieve and maintain the poor in and throughout the parish. It appears by the vestry-book of the said parish, that, from the year 1648 to the year 1703, overseers have been elected for the said respective townships in the following manner, viz. Two overseers of the poor for the town of U., one for L., one for C., D., and S., one for W. W. is part of the township of U. It does not appear from the vestry-book, or other evidence, that from the year 1703 to 1727, any overseers were elected for the townships, but two overseers were elected for the parish, and during that time, churchwardens were elected for the parish, and sidesmen for the townships. On the 10th of November, 1780, in pursuance of a *mandamus*, an *assessment* for the relief and maintenance of the poor of the parish of U., upon all the inhabitants and occupiers of land within the parish, was duly signed by two justices of the peace. In T. T. 6 G. 2. 1781, a *mandamus* issued to the justices of the county of A., reciting, that there were divers householders within the parish of U., able to contribute to the relief of the poor of the parish, and that there were no overseers of the poor of the parish appointed to make rates on all and every the inhabitants and occupiers of lands, houses, and other things rateable within the parish, for the relief of the poor of the parish, and ordering the justices to appoint two or more overseers of the poor for the parish of U. In pursuance of the *mandamus*, on the 30th day of July following, the justices of the peace for the county of S. appointed two overseers of the poor for the parish of U. At the general quarter sessions for the county of S., held the 5th of October, 6 G. 2. 1781, the inhabitants of the vill of C., D., and S. appealed against an *assessment* made 12th August preceding, for the maintenance of the poor of the parish of U., and, on full hearing of counsel, and consideration of the evidence given, as well for the vill as for the township of U., the Court was of opinion, that the inhabitants of the said vill of C., D., and S. (for which vill overseers of the poor were duly, and in due time appointed, and poor's-rates duly made and allowed, before the making of the assessment or rate

An appointment of separate overseers for the subdivisions of a parish cannot be supported unless it expressly appear that the parish could not otherwise receive the benefit of 43 Eliz. c. 2.

appealed against) ought to maintain, and accordingly did order that they should maintain their own poor, distinctly and separately from the other parts of the parish of *U.*; and the Court did further order, that such part of the assessment or rate appealed against as charged the inhabitants of the vill of *C.*, *D.*, and *S.*, for or towards the maintenance of the poor of the parish of *U.*, in respect of what they hold or occupy within the said vill, should be quashed and discharged. The said order was removed into the Court of King's Bench; and the Court ordered, that the order of Sessions, as to such part of it as orders that the inhabitants of the vill of *C.*, *D.*, and *S.*, in the parish of *U.*, shall maintain their own poor distinctly and separately from the other part of the parish of *U.*, be quashed for the insufficiency thereof; and as to the other part of the order, for the quashing and discharging such part of a certain assessment or rate made for the maintenance of the poor of the parish of *U.*, as charges the inhabitants of the vill of *C.*, *D.*, and *S.*, towards the maintenance of the poor of the parish of *U.*, in respect of what they hold within the vill, be affirmed. In Michaelmas Term, 7 G. 2. 1793, a *mandamus* issued to the justices of the county of *S.*, reciting, that there were divers householders within the parish of *U.* able to contribute to the relief of the poor of the parish, and that there were no overseers of the poor of the parish appointed to make rates on all and every the inhabitants and occupiers of lands, houses, and other things rateable within the parish, for the relief of the poor of the parish, and ordering the justices to appoint two or more overseers of the poor for the parish of *U.* On the 15th of April, 1754, two overseers were appointed for the vill of *C.*, two other overseers for the vill of *D.*, two other overseers for the vill of *S.*, two other overseers for the township of *U.*, and two other overseers for the vill of *L.*, by five separate appointments, each appointment signed by the same two justices of the peace for the county of *S.* On the 27th of May following, a *certiorari* issued to remove the five appointments into the Court of King's Bench, which were accordingly removed; and were there affirmed. Since the year 1700 overseers have been separately appointed for each of the townships, and the poor of the townships have been separately maintained. (a)

(b) *Ante*, pl. 54. — LORD MANSFIELD: The case of *Peart v. Westgarth* (b) decides the question: the inability to receive the benefit of the act must appear. In this case, though there were separate overseers from 1643 to 1703, yet all the townships during that period jointly relieved the poor; and the case cited shows, that an acquiescence for forty years will not alter the law. The confirmation of the separate appointments in 1734 is also shown to be no authority; the question does not appear to have been raised; but *Peart v. Westgarth* is a direct authority; and the point was then very well considered; and there the Court thought, that the policy of the statute in the time of *Car. 2.* was a mistaken one; that it proceeded upon a wrong principle; and that it was much better for the purpose of maintaining the poor, to enlarge the districts than to narrow them. —

(a) The present division of the parish, on which this case arose, was different from that mentioned in the case to have subsisted since 1734. There were but four appointments. They all bore date the same day, and were signed by the same two justices.

ASTON, WILLES, and ASHFURST, concurring, rule absolute, and order of Sessions confirming these appointments quashed.

53. *Rex v. Justices of Bedfordshire, E. T. 22 G. 3. Cald. 167.* — On a rule to show cause why a *mandamus* should not issue, directed to the justices of the county of B., to appoint an overseer of the poor for the vill of C. in that county. — The facts upon the affidavit in support of the rule were, that the vill of C. consisted of a capital mansion-house called THE PRIORY, and a large farm-house thereto belonging, of the yearly value of 200*l.*, in the occupation of Sir G. O.; and also of three other large farm-houses, with three other farms, altogether of the farther yearly value of 500*l.*: that about forty years ago there was another farm-house, and a farm in the said vill, but that the house is now pulled down, and the farm occupied by Sir G. O.: that in the vill there was also a water-mill now pulled down: that there is a chapel in the vill for the celebration of divine service: that there immemorially has been, and now is, a constable appointed in and for the said vill: and that there are within it four substantial householders, but no churchwarden or overseer. These facts were sworn to by J. C., who had about forty years before rented the farm-house, now pulled down, together with the farm now in the occupation of Sir G. O. — LORD MANSFIELD: To support this application, it is necessary that the place should be a vill; but you have not said that it was ever so reputed, or even that you believe it to be one; and Sir G. O.'s affidavit says, it never was so reputed. You next deceive the Court by a false suggestion, that there is a constable, and that a constable has immemorially been appointed. It is not true; and the argument is only, that one ought to be appointed. Next, as to the chapel, it is only a private chamber in the house; sometimes one and sometimes another, as suits the convenience of the family; used for religious purposes when they are in the country, and when they remove from it, shut up, or used indifferently with the other parts of the house. Is it possible that this can be the chapel of a vill? — BULLER J. The Court must have probable ground laid before them to show that the place is a vill, or they will not interpose; and it is laid down in *Strange (a)*, that it is a good return to a *mandamus*, that a place is not, nor ever was, reputed to be a vill. — WILLES, and ASHFURST, concurring, rule discharged with costs.

The place must appear to be a vill before the Court will order separate overseers to be appointed.

- 1 Mod. 78.
- 2 Salk. 486.
- 3 Salk. 99.
- 2 Str. 1004.
- 1071.
- Burr. S. C. 35.
- 101.
- 1 Bl. Com. 114.

Burr. S. C. 38.

(a) *Rex v. Welbeck, ante*, pl. 50.

Separate overseers cannot be appointed for the sites and areas of ancient cathedrals, colleges, and inns of court.

54. *Rex v. Justices of Peterborough, H. T. 23 G. 3. Cald. 238.* — On a rule for a *mandamus* to appoint overseers of the poor for THE MINSTER in P., it appeared on the affidavits in support of the rule, that within or close adjoining to the city or town of P. is a certain place called P. Minster; that it has always been extraparochial, and always had a number of poor belonging thereto: that such poor had, till the 7th of May last, been always maintained, as the poor belonging to such extraparochial place, by the directions of the Dean and Chapter of the said place, called THE MINSTER, and out of some fund belonging to them: that on the 9th of May last, the chapter clerk of the Dean and Chapter being applied to, to receive E. K. widow, a pauper belonging to the extraparochial place, and who had come by pass to the parish of St. J., within the city or town, and close adjoining to the Minster, as a rogue and vagabond, declared, that the Dean and Chapter had already so many poor, that they did not know how to maintain them; and that, though

this pauper did belong to THE MINSTER, he should not take her in, as there were no officers appointed within THE MINSTER to whom any order of removal could be directed; and that he meant to avail himself of such want of appointment: that upon a statement of these facts, application was also made to the defendants, and to two other justices of the peace for the liberty of the soke, all of whom resided within the extraparochial place called the cathedral of *P.* or *Minster*, to appoint an officer for the same, and to grant their order of removal directed accordingly: that the justices refused so to do, no officer having at any time before been appointed for such place; though it was sworn they believed, that the pauper of right belonged thereto: that the extraparochial place contains upwards of forty-six acres of ground, known by several distinct names, viz. the *Minster-Close*, the *Minster-Square*, the *Vineyard*, &c.; and, together with the bishop's and six prebendal houses, twenty-five dwelling-houses at least, exclusive of poor houses; and that these houses are inhabited, except in the instance of the bishop and three of the prebendal houses, altogether by laymen or by strangers to the cathedral, and those generally persons of fortune: that the said twenty-five dwelling-houses contain upwards of 124 persons: that there are also in the said extraparochial place several poor-houses, containing a number of poor, who have by birth, marriage, or servitude acquired a settlement therein; and who from some fund belonging to the dean and chapter receive as a maintenance the sum of two shillings or eighteen pence by the hands of the chapter clerk, together with their division of the sacrament-money, amounting to six pence *per week* over and above the aforesaid payment: that there is also in the *Minster* a grammar-school, with an annual endowment for the support of the master, payable out of some fund belonging to the dean and chapter, by whom the master is appointed: that within the *Minster* there is a place for the performance of divine worship, and for the burial of the dead; and that it appears from the register there kept for the purpose, and which is distinct and separate from that of the parish-church of *St. J.*, that from the year 1756 to the end of the year 1781, there have been 42 marriages and 48 baptisms, and from the year 1757 to the end of the year 1781, 58 burials had therein: that the land and buildings situate within the *Minster*, from a valuation taken thereof, are of the annual amount of 400*l.* at least; that the arrears of interest due upon the sum of 200*l.* lodged in the hands of one of the deponents in support of this rule in the character of trustee, and which had devolved upon three poor girls who had become chargeable to the extraparochial place, were demanded of him by the chapter clerk of the cathedral or *Minster*, and by him paid accordingly, and a receipt given as follows: "RECEIVED, 6th November, 1782, of *R. P.*, Esq., the sum of 2*l.* 3*s.* 8*d.*, the balance of his account with *J. S.* for interest-money in full to the 11th day of September last, and to be by me applied towards the maintenance of three children of the said *J. S.*, who have become chargeable to the Dean and Chapter of *P.* — *N. H.*, Chapter Clerk." — That in the memory of another of these deponents, who was 86 years of age, there had been several other poor-houses inhabited within the extraparochial place, but that some of them were fallen down, and that others had been taken down by order of the dean and chapter, to prevent their being inhabited.

— Against the rule it was sworn, that the precinct or close of the cathedral church of *P.*, described in the affidavit in support of the rule, by the name of *THE MINSTER*, is extraparochial; and is not a township or vill, or was ever so reputed: that there have been poor within many years resident within the precinct; and that within their precincts the dean and chapter are by their statutes required to distribute in charity the sum of 20*l.* annually: that it appears by a register-book kept for that purpose, that till the year 1737, the aforesaid sum, and no more, had been annually so applied from the chapter-fund; and that this sum, together with the sacrament-money, had been sufficient for the support of the poor then belonging to or inhabiting the precinct: that it appears from the same book, that in the year 1737, this sum proving insufficient, a farther sum was expended for their relief; and that since that period, the expence of maintaining the poor belonging to the precinct has in some years amounted to upwards of 80*l.*; but that the dean and chapter have, although without any appropriated fund, defrayed the whole expence: that this burthen has tended to the diminution of the revenue allotted for the stipends of the several officers of the cathedral, the repairs of the fabric, and other contingent expences: that the land and buildings within the precinct, exclusive of the bishop's palace and other official houses, belong partly to the bishop, and partly to the dean and chapter; and are all (except two houses which are the property of private persons) occupied by their respective lessees: that there never was any constable or other civil officer appointed or chosen for the precinct or close, or any overseer of the poor or churchwarden; nor have the inhabitants ever contributed to the relief of the poor within the precinct; or been called upon so to do: that, upon the application made to these deponents to appoint an overseer of the poor for the precinct of the cathedral church of *P.*, and to grant an order of removal, &c. as there appeared no trace or vestige of any such office in any of the writings or registers belonging to the church, and as no such officer or churchwarden ever had to their knowledge been appointed, they were of opinion, that they had not authority to make such appointment, and therefore declined to comply with the requisition made. — LORD MANSFIELD: This space comprehends no more than the site of the cathedral and the area round it; and consequently was in former times within sanctuary, and as such, sacred and inviolable as the church itself. In modern times, to be sure, there is no such thing as sanctuary; but these places have throughout all ages, without interruption, enjoyed these immunities, as *Westminster Abbey* now does, and other places of the like nature. The ancient inns of court, though not exactly upon this principle, have also at all times been privileged; and a similar exemption was not questioned in a late case, that of *Rex v. Gardner* (a), with respect to that part of the court and garden-ground of *Catherine Hall*, in the university of *Cambridge*; which lay within the old and extraparochial part of that foundation. Would you say that *Christ Church* (b) in *Oxford* is a vill? I am not satisfied from this affidavit, that this place is a vill: and the party applying (c) do not even call it so. — BULLER J. As the party applying does not venture to assert that this place had ever any civil officer, or was ever even reputed to be a vill, (the last of which, where the facts of the case do not within some clear prin-

(a) *Post*, pl. 167.

(b) See 8 Mod. 40.

(c) *Rex v. Denham*, ante, pl. 48.

(a) *Rex v. Gardner*, Cowp. 79.

Separate overseers may be appointed for an extraparochial place, if it be a vill by reputation, although it only consists of two houses. S. C. Cald. 542.

(a) *Ante*, pl. 48.

(b) See *Rex v. Besland*, *ante*, pl. 26.

Where a parish consists of several townships,

ciple of law show the place to be of that denomination, the Court has holden to be indispensably necessary for the purpose of founding an application for a *mandamus*,) this case falls within that (a) which has been cited, and the rule must be pronounced accordingly. — WILLES and ASHHURST Js. concurring, rule discharged with costs.

60. *Rex v. Overseers of Eyford*, T. T. 25 G. 3. EDITOR'S MSS. — This was an appeal against the appointment of J. P. and S. W. to be overseers of *Eyford*, which appointment the Sessions confirmed, and stated, that *Eyford* is an *extraparochial place*, consisting, at present, of a *mansion-house* and a *farm-house*, occupied by different persons, but both together, with the estate thereto belonging (of the yearly value of six hundred pounds), the property of one person: that, twenty-five years ago, there was in the same place a *cottage*, now gone to decay, the site of which was, at the time of the appeal, covered with a plantation. In the year 1727, the occupiers of the two present houses acted as overseers of the poor of the hamlet of *Eyford*; and in 1748 W. W., the then owner of the estate, and occupier of the mansion-house, acknowledged himself to be liable to maintain certain paupers belonging to the hamlet by a certificate duly allowed, and the paupers were accordingly relieved by his tenant residing in the farm-house, till within these fifteen years; during the latter part of which time the estate came into the possession of Mr. D., a justice of peace, who, at his death, left his widow in possession of the mansion-house, at which time there was likewise a widow in possession of the farm-house, and it is not till within these two years that there has been any *substantial householder* in *Eyford* qualified to serve as overseers. From 1769 to the present time, the returns of men qualified to serve in the *militia* have been made to the deputy-lieutenants by the present occupier of the farm-house, who subscribed such returns as *constable*; the persons appointed are *substantial householders*, occupying the two houses aforesaid. — LORD MANFIELD said; I think it should be stated whether it is a *vill* by *reputation*. I am not satisfied with the reason that there are but two houses; suppose a parish reduced to two houses; — the case of *Rex v. Denham* (a) was not determined on that ground only. — LORD HARDWICKE goes on all the circumstances, particularly its being called a *PARK*; — and Mr. J. LEE puts it on its not being a *vill* by reputation. — I do not see why, under the statute of 43 *Eliz. c. 2.*, there may not be an appointment of *one overseer* if there is but one *substantial householder*. (b) The case was then sent back to be re-stated, and now came up with this addition, "that *Eyford* was a *vill* by reputation." — MR. WILSON admitted this was decisive against the rule; but MR. LANE contended, that the facts being before the Court, they would form their own judgment, and not adopt that of the justices. — BULLER J. This is a case on which the Court cannot form a judgment; they sent it to the Sessions to know whether this place be a *vill* by reputation; the Sessions say it is, and that must make an end of it. — Order confirmed.

61. *Rex v. Horton* (c), M. T. 37 G. 3. 1 T. R. 374. — A rule had been obtained last Term, calling upon the defendants, who

(c) See *Rex v. Watson*, pl. 66.

were justices of the peace for the county of *L.*, to show cause why a *mandamus* should not issue, commanding them to appoint two overseers of the township of *P.* in the said county. — This motion was founded on affidavits, which stated, that the parish of *M.* consists of eight separate and distinct townships or villages, to wit, *M., T., H., P., B., A., F.,* and *L.*, each of which has immemorially had a separate constable and churchwarden. That *F.* and *L.* from time immemorial, and *A.* for the space of about seventy years, have had separate overseers: that before the separation of *A.* there was a joint appointment of six overseers for the six townships, one out of each, who made a general rate or assessment for the poor of all the six townships; and that each overseer acted within his own township; but that at the end of the year there was a general settlement of all disbursements, and the expences borne equally by all. That since the separation, there has been a like joint appointment of five overseers for the remaining five townships, who have acted in the same manner as before the separation. That the parish of *M.* could not reap the benefit of the 43 *Eliz. c. 2.* in relation to the maintenance, relief, and government of its poor, on account of its largeness, being fourteen miles in length and ten in breadth, and also on account of its great population, and because three out of the eight townships maintained their own respective poor. That the defendants were requested at the last annual meeting to appoint two overseers for the township of *P.*, which they refused. On the other hand, several affidavits were read against the rule, which stated, that the parish of *M.* consists of four distinct and separate townships, viz. *M., A., F.,* and *L.*, and that the township of *M.* consists of five separate hamlets or precincts, and not separate townships: that the rates and assessments had been made generally for the township of *M.* at large, and not for each separate district; and that the overseers' accounts had been made out in the same manner. It was contended against the rule, that in order to lay a ground for the Court to grant the *mandamus*, it would be necessary to show, FIRST, That this district of *P.* is a township; and SECONDLY, That it cannot enjoy the benefit of the statute of 43 *Eliz. c. 2.* But on the other side it was contended, that where there is a constable, there necessarily is a township; and here it is agreed on both sides, that there is a constable; but what is decisive in the present case, is, that it appears to have been always necessary for the parish of *M.* to have five overseers, which is a proof that it could not enjoy the benefit of the 43 *Eliz.* which confines the number to four. — ASHHURST J. This is a very plain case. It has been argued against the rule, that if the Court should grant a *mandamus* to appoint separate overseers for the township of *P.*, one of the five remaining districts, it will necessarily follow, that the others will be entitled to the same privilege. But that argument applies equally the other way; for as soon as the other three townships were separated, the remaining five had a right to be so. It is clear that the parish, as a parish, cannot have the benefit of the statute of 43 *Eliz. c. 2.* because it has always had a greater number of overseers than are allowed by that act. Therefore, upon that ground, as well as upon the former, that the other three townships have had separate overseers, I am of opinion that the five remaining ones are also entitled to have

them. — *BULLER J.* The parties applying for this rule must necessarily make out two points before they can succeed: first, that this is a township; and, secondly, that it cannot have the benefit of the 43 *Eliz. c. 2*. The last is the point which has been most relied on; for, as to the first, it certainly is a township. Wherever there is a *constable*, there there is a *township*. There may be a *constable* for a larger district than a township, but not for a smaller. The doubt in many of the cases, Whether such a place was a township or not? has arisen where there was no *constable*. Then the remaining question is, Whether the township of *P.* can have the benefit of the 43 *Eliz.*? What is a decisive answer against that is, that the other three townships have separate overseers. We must consider what is meant by the benefit of the statute. It is that the parish may maintain their own poor, as a parish; for unless they can do it as such, they cannot have the benefit of the statute. Now it is here stated, that three of the townships maintain their own poor; but unless they all join, they cannot reap the benefit of the statute. It has been argued, that the parties applying for the *mandamus* should have shown special reasons to the Court, why they cannot have the benefit of the statute. But in fact they have done so; for they have stated the largeness of the parish, and its great population, which circumstances are not denied by the other side. Independent of these reasons, another ground laid for the *mandamus* is, that the five remaining townships require five overseers. If from necessity they must have five overseers to govern their poor, that affords a strong argument to prove, that even if these five comprehended one parish, independent of the other three, yet they could not enjoy the benefit of the 43 *Eliz.*, which allows only four overseers. The cases which have been mentioned were all rightly decided, but they do not apply to the present. As to the case of *Peart v.*

- (a) *Ante* pl. 54. *Westgarth* (a), the parish had enjoyed the benefit of the statute of *Eliz.* for one hundred and twenty years. After such a length of time, the Court said, that they must have shown to them some strong reasons to induce them to believe that it could not be continued, before they would appoint overseers in a different manner from that pointed out by the statute of *Eliz.*, notwithstanding any intervening custom for forty years; but no sufficient reason appearing, they directed one joint appointment for the whole parish.
- (b) *Ante*, pl. 51. Next, as to the case of *Rex v. The Justices of Middlesex* (b), it appeared most clearly that the parish of *Kentish Town* could have the benefit of the statute of *Eliz.* There were two overseers appointed for the whole parish, which was sufficient to answer the purposes of the statute. Then, as to the case of *Rex v. Ulzeler* (c), the answer to it is, that the parish did not show that they could not have the benefit of the 43 *Eliz.* — *PER CURIAM*, rule absolute.

And if a place be found to be a *vill*, the appointment of separate overseers is of course.

62. *Rex v. Ronton Abbey, H. T. 28 G. 3. 2 T. R. 207.* — The case: *R. A.* is an *extraparochial place*, containing four or five hundred acres of land, three hundred and fifty of arable and pasture, and fifty of wood, upon which there are now three houses; one a very large farm-house, occupied by *Mrs. S.*; the other two small houses; one with about an acre of land to it, the other with about four or five roods to it; one of them occupied by *T. M.*, a hired servant of *Mrs. S.*, and his family; the other by *J. K.*, a day-

labourer, and his wife; *M.*'s house being distant about a quarter of a mile from *Mrs. S.*'s house, and the other about the same distance. Many years ago there was a fourth house on another part of the said abbey-lands, which is now down. The extraparochial lands are called *Abbey Lands*. There are other lands in the adjoining parishes of *R.* and *S.*, called *Monastery Lands*, part of the said respective parishes, and contributing respectively to the relief of the poor thereof. The several paupers within *R. A.* who have received alms, have received the same from the occupiers of lands therein. Four credible witnesses, who had lived for many years near *R. A.*, declared, that they never heard it called a *township* or *vill*, nor ever heard any thing about it one way or the other. In 1729 an order of removal was made, which order of removal, taken from the clerk of the peace's file, was in the words and figures following: to wit, "The order was directed to the church-wardens and overseers of the poor of the parish of *S.*, and to the overseers of the poor of the liberty of *Ronton Monastery*, an extraparochial place within the county of *S.*, removing some paupers from *S.* to *R. A.*" There was an appeal against the order, which appeared, from the clerk of the peace's books, to have been quashed generally. In 1773, by another order of removal, *M. E.* was removed from the parish of *E.* to the liberty of *Ronton Monastery*. With this last-mentioned order *T. B.*, who was then overseer of *E.*, took the pauper to *R. A.*, and offered to deliver her to *Mrs. S.*, then resident there, who at first refused to receive her, but without assigning any reason for such refusal. *B.* then went to a magistrate and procured another order, and then returned and delivered one copy of the order and the pauper to *Mrs. S.*, telling her, if she did not receive her she would be liable to a penalty of five pounds. *Mrs. S.* received her, and there was no appeal against this last-mentioned order of removal, nor did the pauper ever come back into the parish of *E.* In the year 1779 there was another order of removal, by which *W. K.*, *E.* his wife, and their four children, were removed from *G.* to *R. A.* *W. S.*, the overseer of the parish of *G.*, went to *E. S.*, the son of *Mrs. S.*, then residing with his mother, with the pauper and this last-mentioned order: the said *E. S.* said, "We have no overseer residing here, but we have appointed *T. A.* our overseer;" and directed him to *A.*'s house, who then resided at *E.*, about a mile distant from the abbey, but rented some of the abbey-lands. *S.* then went and delivered the paupers to the said *T. A.*, who was then overseer of *R. A.* Notice of appeal was given by *A.* to the parish of *G.* against this last-mentioned order. The appeal was afterwards heard; and it appeared in evidence that *R. A.* did not, at the hearing of the said appeal, set up the defence of their not being liable to maintain their own poor; but the appeal was quashed upon the merits. Constables and surveyors of the highways had been frequently appointed for the *monastery lands*, but they never had any jurisdiction over the *abbey-lands*; and it did not appear that any constable or surveyor had ever been appointed for the abbey lands. — The Sessions adjudged this place to be a *vill by reputation*. — And THE COURT were of opinion, that as the Sessions had adjudged, as a fact, that this was a *vill by reputation*, they were precluded from going into that question.

Burr. S.C. 57.

Where a township has had, for sixty or seventy years past, separate overseers, and has maintained its own poor separately from the parish at large, it is still entitled to the same privilege.

(a) See *Rex v. Watson*, pl. 66. *Rex v. Palmer*, pl. 67.

(b) *Ante*, pl. 54.

(c) *Ante*, pl. 51.

(d) *Ante*, pl. 61.

63. *Rex v. Leigh* (a), T. T. 90 G. 3. 3 T. R. 746. — The case: The parish of L. is five miles in length, and four and a half in breadth. It consists of eight townships. The township of F. (one of the eight) is within the said township, and consists of six farm-houses, with farms thereunto belonging, containing seven hundred acres of land, and three or four small houses. The township of F. for sixty or seventy years (and before, for any thing that appears to the contrary) has had separate overseers, and separately maintained its own poor. Two overseers have been appointed for the township of F., and two for the rest of the parish of L. A constable has regularly been appointed for the township of F., and another for the rest of the parish. In 1764, a pauper was removed by an order of two justices from the parish of L. to the township of F. within the said parish, from which it does not appear that there was any appeal. The question was, Whether this case comes within the 13 & 14 Car. 2. c. 12.? — LORD KENYON C. J. There is no doubt but that this case is within the 13 & 14 Car. 2. c. 12. In some of the cases it has been made a question, Whether the particular district were or were not a *vill* or *township*? but no such difficulty occurs in this case, because it is stated as a fact that F. is a township. Then the question is, Whether at the time of passing the statute of *Charles the Second* this district was in a situation to receive the benefit of the 43 *Eliz.* c. 2.? for if the parish were properly divided at that time, nothing which has happened since will induce us to make any innovation. In the cases cited, *Pearl v. Westgarth* (b), and *Rex v. Justices of Middlesex* (c), it was stated, that from the time of *Elizabeth* down to the reign of *George the First*, those parishes had in fact reaped the benefit of the statute of *Elizabeth*; whereas here for sixty or seventy years, and perhaps for a longer period, for any thing that appears to the contrary, this parish has been subdivided, and has not had the benefit of that statute. This therefore is like the case of *Rex v. Sir Watts Horton*. (d) It has been doubted by country gentlemen, whether the poor are better maintained in large or small districts, though the former has been judicially said in this court. In small divisions the officers are more attentive to their duty, and in the part of the country with which I am acquainted, the poor are better provided for in the small districts. Therefore, as the usage in this case coincides with our ideas on the policy, and as we are warranted by the adjudged cases on this point, we think it highly proper that the division of this parish, which has subsisted so long, should continue. — ASH HURST J. Wherever it appears that for any length of time the parish has had the benefit of the 43 *Eliz.*, it must be shown that from the increase of population, or some other cause, it is impossible that they can continue to reap the benefit of that statute. But that is not the case here; and nothing can be stronger to show that this parish cannot have the benefit of the 43 *Eliz.*, than that, in fact, they have not had it as far back as any memory goes. — BULLER J. Before a parish can be subdivided into smaller districts for the maintenance of their poor, it must appear that they cannot have the benefit of the 43 *Eliz.* But it is material to consider the meaning of the phrase, that a parish cannot reap the benefit of that statute. It does not mean that it is absolutely impossible for them to maintain their own poor, as a parish, for that would not be the case even if the parish were one hundred miles

in circumference, but that it is inconvenient for them so to do. Now in judging on a question of convenience there can be no doubt on the facts of this case; for it is stated that for sixty or seventy years past, and perhaps for all preceding times, this parish have not maintained their own poor jointly. And the strongest instance of their having been subdivided for a long period, is the circumstance of the parish at large having removed a pauper into this particular district, as a place liable to maintain its own poor separately. I entirely agree with my LORD CHIEF JUSTICE, that greater care is taken of the poor in small than in large districts. And if in any case we were to find that it was formerly inconvenient to the parish at large to maintain their own poor jointly, though it were convenient for them to do so now, we would not assist them in overturning the old practice; for that would operate as a discouragement to the efforts of individuals to reduce the poor rates, which have succeeded in many small districts. I even go further; for though it should appear that a parish had enjoyed the benefit of the 43rd Eliz., yet if they could not now conveniently maintain their own poor jointly, we would permit them to divide themselves, provided there be such legal divisions in the parish as are capable of supporting their own poor separately under the provisions of *Charles the Second*. — *GROSS J.* In determining this question, I shall not proceed on any speculations of my own; for the act of parliament itself has supposed that the largeness of a parish may be a good reason for dividing it. Though if I were to give my own opinion of the policy of the law, I should not hesitate to say, that from my own experience I have found that the poor are better provided for in small than in large districts. The question here is, Whether it does not appear that the parish cannot have the benefit of the statute of *Elizabeth*? and I am clearly of opinion that on these facts they cannot. For, in the first place, it does not appear that the parish have ever, as a parish, maintained their own poor. And in the next place it is stated, that in 1764 a pauper was actually removed from the parish at large to this very township, which is an admission on their part that they had no right to call on this district to contribute to the general poor-rate of the parish.

64. *Rex v. Newell (a)*, *E. T.* 31 *G. 3.* 4 *T. R.* 266. — The parish of *S. G.* lies partly within the borough of *R.* and partly without. The hamlet of *W.* is that part which lies without the borough, is about three miles square, and has immemorially had a separate constable. It has also immemorially had a churchwarden, but no other church than that which is common to the parish at large. And the hamlet-people have been used to attend the vestry-meetings of the parish at large at the church, but the people of that part of the parish out of the hamlet never attended the hamlet meetings; for which hamlet meetings, to choose officers for the hamlet, notices were published in the church on the *Easter Sunday* in every year. From the year 1648 to the time of trying this appeal, the inhabitants of the hamlet part of the parish have had overseers of the poor separately appointed for the hamlet, and chosen at meetings of the hamlet-people only; the number of which overseers has varied from that time. The hamlet have in every year

If a parish consist of two separate districts, each of which have immemorially made a separate rate, but blended the money in one joint fund, though it is applied in distinct proportions, and they have had for 150 years more than four overseers, and each hamlet a constable of its own;

(a) See *Rex v. Watson*, *post*, pl. 66.

yet, unless it be found that such parish is incapable of reaping the benefit of the 43 Eliz., the said districts are not entitled to have separate overseers appointed for the maintenance of their respective poor.

had either two or three overseers, except in four different years at different intervals, when they had one. Such overseers have separately distributed and laid out the money within the hamlet, and their accounts have been separately kept, and separately allowed by the justices; and it does not appear that any interference has ever been made in the distribution or accounts by the payers in the borough-part of the parish, except at the general settlement of accounts as hereinafter mentioned. The part of the parish lying within the borough has during the same time invariably had one churchwarden and three overseers; and such overseers of the borough-part have acted upon their separate rates, and in their distributions and accounts, distinctly from the hamlet and the inhabitants or overseers of the hamlet, except that the overseers of the borough have afforded relief to the poor persons belonging to the hamlet-part of the parish when resident in the borough, and have indemnified themselves out of the general fund arising from the poor-rates, collected as well in the borough-part as in the hamlet-part of the parish, at the general settlement of accounts as hereinafter mentioned. Certificates have, in various instances, since the year 1709 been separately granted by, and directed to, the overseers of the hamlet of *W.* to and by the overseers of divers other parishes; but it does not appear that a certificate has ever been granted by or to the overseers of the hamlet of *W.* to or by the overseers of that part of the parish which lies within the borough. Orders of removal have been made both from and to the hamlet of *W.*, and the paupers removed accordingly without appeal; particularly in 1755 an order of removal unappealed from was made from the parish of *St. L., Reading*; and in 1774 another order was made from the parish of *St. M. in Reading*; but it doth not appear that orders of removal have ever been made from or to the said hamlet to or from that part of the parish of *St. G.* which lies within the borough. In 1649 the following order was made; viz. "*April 23. 1749: Whereas at the quarter sessions holden for the county of B., the 3d of April instant, the difference of the rates concerning the poor of the parish of St. G. between the liberty of W. and the other inhabitants within the borough of Reading in the said parish was referred to us; we, upon hearing all parties, do order that the inhabitants within the liberty of W. shall, according to a former order, pay the yearly sum of 20*l.* 4*s.* 4*d.* monthly apportioned according to the statute towards the relief of the poor of the parish of St. G.; and that the inhabitants of the parish within the borough shall pay the yearly sum of 35*l.*; and in case the said sums shall not be sufficient for the relief of the poor of the parish, then the liberty of W. and the other inhabitants of St. G. shall pay proportionably according to the former sums; and in the mean time the overseers of W., having seen the accounts of the overseers of the parish of St. G., and finding the necessities of the poor do require it, shall pay forthwith their proportionable arrears.*" Signed by two justices. Ever since that order was made, the directions contained in it have been observed by the two parts of the parish of *St. G.* in regard to their respective contributions to the poor, and they have paid accordingly, the hamlet three eighth parts, and the borough-part five eighths, of the whole expences incurred by the poor of both parts of the parish; *the whole ex-*

poor, when incurred, being computed into one integral sum; the overseers of the hamlet-part and those of the borough-part have accounted with each other reciprocally, according to the above proportion. There has been for several years and now is a poor-house in that part of the parish of *St. G.* which lies within the borough, in which the poor both of that part and of the hamlet-part of the parish have been jointly maintained, and the expences attending such maintenance have been defrayed by the two parts of the parish respectively, according to the proportion of five to three. The overseers of the hamlet have uniformly, as far as any evidence could be had, made rates separately for the hamlet; and it does not appear that since the year 1648 the persons living in the hamlet have ever been charged by a rate made by the overseers of the parish till the rate now in question. In the year 1740 a rate was made in the hamlet, and acted under, intituled, "A rate made by the churchwardens and overseers of the poor of the hamlet of *W.* in the parish of *St. G.*, as well towards the necessary relief and maintenance of the poor of the parish as of the hamlet, after the proportion of 9*d.* in the pound charged on the inhabitants of the hamlet;" and such has been in general the mode of intitling all the rates made in the hamlet-part of the parish to the time of the present rate. In pursuance of an act of the 26 *G.3. c.56.* intituled "An act for obliging the overseers of the poor to make returns upon oath to certain questions therein specified, relative to the state of the poor," separate returns were made by the parish of *St. G.* and the hamlet of *W.*, as distinctly maintaining their own poor. The inhabitants of *W.* conceiving themselves aggrieved by continuing the payment of three eighths of the general expenditure, in September 1789 the officers of the hamlet gave notice to the officers of the borough-part of the parish that they would not pay any rate made by the latter, or contribute to the relief of the poor within the borough-part, (except of those belonging to the hamlet of *W.*, which should from time to time be in the poor-house of the parish of *St. G.*, for which expence they would contribute their fair proportion according to any rate which should be agreed upon,) it being their intent to apply all future monies raised by a poor-rate intended to be separately made for the hamlet to the necessary relieving of the poor only who should belong thereto separately, and without the interference of the parish of *St. G.* within the borough. After this notice had been given, the hamlet of *W.* made a rate, intituled "A second rate or assessment made the 2*d* of January, 1790, by the overseers of the hamlet of *W.*, for the necessary relief of the poor of the hamlet, at a proportion of 2*s.* in the pound," which was duly published. And after this notice the next rate but one made by the borough-part of the parish of *St. G.* was the rate in question, and which was intituled "A rate for the relief of the poor of the parish of *St. G.* in *Reading*, including *W.* hamlet, part of the said parish," &c.; but it does not appear that any former rate for the borough-part of the parish made use of the words "including *W.* hamlet part of the parish." The appellant, *Newell*, has no property within the parish of *St. G.* within the borough, but is an inhabitant of the hamlet, and is charged with the rate appealed from for his property within the hamlet. He is charged also to a rate which has been made by the overseers of the hamlet for the same period, which

has also been regularly published. Mr. *Newell*, conceiving that he was liable only to the last rate, and not to the rate made by the overseers of the part of the parish of *St. G.* within the borough, appealed against it. — LORD KENTON C. J. The case cited from Sir *T. Raymond* would have great weight in the decision of a case where the facts are the same: there the Court proceeded on the ground of there being distinct officers, distinct rates, and distinct accounts (a); but in these districts there are not distinct accounts, but on the contrary there is one joint account for both. On the facts disclosed in this case, it does not appear that these two districts, which compose one parish, cannot have, nor is it stated that in point of fact they have not had the benefit of the 43 *Eliz.*: but on the contrary almost every fact in the case goes to establish this point, that they have squared their conduct rather by that statute than by the statute *Car. 2.* For if they had proceeded on the latter, there would have been no communion between them, and they would have acted to all purposes as if they had been perfectly distinct parishes. It is indeed stated that there have been removals to *W.* from several different parishes; but it is not pretended that there ever was one from *St. G., Reading.* Probably distant parishes may have been deceived by these districts having separate overseers, and have concluded from thence that they were separate parishes; but their misconception cannot vary the case. The material facts in this case are all included in those few lines which follow the order in 1649. To that order I only refer as a date in the case; for it is extrajudicial: but it is stated, that “ever since that order was made, the directions contained in it “have been observed by the two parts of the parish of *St. G.*, in “regard to the respective contributions to the poor; that they “have paid accordingly, the hamlet three eighths, and the bo-

(a) On Wednesday, January 17. 1682. at Justice-Hall, at the Old Bailey, in London, a case was referred to the justices, which was this: One *Fletcher* a widow, having several children by her former husband, who lived in the parish of *St. Buttolph* without *Aldgate*, which parish lies in two counties, viz. *London* and *Middlesex*, marries a second husband, and then they put out the children to nurse at *Enfield* in *Middlesex*, and then the mother dies, and after her the father-in-law; the nurse applies herself for money to the parish of *St. Buttolph*, which hath one churchwarden, and several overseers of the poor of the county of *Middlesex*, and city of *London*, and the parish rates are several; the woman lived and died in that parish which lies in *Middlesex*, who contended with the other part of the parish in *London*, and upon application to the Quarter Sessions in *Middlesex*, the justices of peace there ordered that that part of the parish which was in *London* should go equal charge in relieving these children; and that part of the parish which is in *London* not satisfied with the order, ap-

plied themselves to the gaol-delivery at the Old Bailey, and there resolved by *Pemberton* Chief Justice, *Dolben* and other justices there, that without any particular usage to the contrary, the parish in both counties ought to contribute their shares towards the relief of the children, because the statute of 43 *Eliz. c. 2.* names only parishes: But in regard it was made appear, that each part of that parish had distinct officers, and made distinct rates, and had used time out of mind to make distinct accounts to the justices of each county, the Court did look upon each division as a several parish, and thereupon ordered, that that part of the said parish which lies in *Middlesex* shall pay the nurse, and provide for the future for the said children. And it was resolved, that no notice can be here taken of the place of the birth of the children, but of their last settlement, by 43 *Eliz. c. 2.*, because they are only poor children, and not vagabonds; but they which are rogues or vagabonds within 39 *Eliz. c. 4.* shall be provided for by the place where they were born. — *Ray, Rep.*

"rough-part five eighths of the whole expences incurred by the poor of both parts of the parish; *the whole expences, when incurred, being computed into one integral sum*; and that the overseers of each part have accounted with each other." Then it appears to have been only one district, affording one integral fund for the poor of both parishes; and that when one part has overpaid its proportion, the other has repaid it; but it was merely for their own convenience that they have subdivided themselves, as is frequently done in other parishes, where one overseer agrees to superintend one part of the parish and another the rest. But with regard to the proportions, agreed upon in 1649, which each district was to pay; those indeed would not be binding at this time, if upon inquiry it should appear that they are unequal, considering the present circumstances of the parish. If that had appeared in the case, which is attempted to be inferred from it, that these districts cannot reap the benefit of the statute of *Eliz.*, the objection would be well founded; but it appears that they have had the benefit of that statute. The only circumstance that can bear the semblance of an argument against this decision is, that these districts have had more than four overseers; but that appeared to be the case in several other parishes, on an inquiry directed by LORD MANWIELD in *Rex v. Loxdale* (a); so that though it may be a very material ingredient in these cases, it is not a decisive one. As therefore it is not stated as a fact in the case that these districts cannot reap the benefit of the 48 *Eliz.*, but as it appears (on the contrary) from all the facts, considered together, that they have had the benefit of it, we should overturn all the authorities, if we were to determine that these districts might now be subdivided.—ASHHURST J. One material fact is wanting in this case, which occurred in that of *Rex v. Sir W. Horton* (b), where it was stated that those townships could not reap the benefit of the 48 *Eliz.* The justices at the Sessions should have found that fact one way or the other. But, though they have not directly stated the fact, they confirmed the rate which was made for both the districts together, which rather shows that in their opinion these places could have the benefit of the 48 *Eliz.* What is decisive in this case is, that it does not appear that these districts have ever acted separately, but on the contrary that they have had one joint sum for the poor of both parts of the parishes, and that they have settled their accounts at the end of each year.—GROSER J. Nothing is stated in this case to satisfy my mind that this parish cannot, by reason of the largeness of it, reap the benefit of the 48 *Eliz.*; but that, on the contrary, they have in point of fact had it, except in one or two instances where they have acted otherwise merely for their own convenience. In the first place, there have never been any removals from one district to the other; next, all the poor have been maintained together in one poor-house; and the inhabitants of the hamlet have constantly attended the vestry-meetings of the parish. Now these three circumstances convince me that this parish can have, and have had, the benefit of the statute of *Eliz.* If they could not, the justices at the sessions should have said so; but they seem to have entertained a different opinion by confirming the rate.

65. *Rex v. Morris*, H. T. 32 G. 3. 4 T. R. 550. — Two justices in June, 1791, appointed the defendant, "being a substantial house-

(a) *Ante*, pl. 27.

(b) *Ante*, pl. 61.

A hamlet and a vill are synonymous.

(*) *Ante*, pl. 52.

Whether or not a parish can have the benefit of the stat. 43 *Eliz.* c. 2. by maintaining its poor with not more than four overseers, is a fact which the Sessions ought to find, and should not leave to be presumed by the Court from other conflicting evidence stated in a case reserved; such as, that the parish had the benefit of the statute down to

"holder of the parish of *L.* in the county of *C.*, to be overseer of the poor of the hamlet of *V.* in the said parish:" he appealed to the next Quarter Sessions of *C.*, where the appointment was confirmed with costs, stating it to be "on the hearing of the appeal touching the appointment of *R. M.*, as one of the overseers of the poor of the hamlet of *Velindre*," &c. To the order of Sessions, returned by the *certiorari*, was annexed "a rate on the inhabitants and all other substantial householders in the parish of *L.* towards the relief of the poor, *May* 16. 1791;" and, in that part of the rate, which respected *V.* hamlet, the appellant was rated. One objection was, that this is not an appointment for a parish under the 43 *Eliz.* c. 2., nor for a vill under 13 & 14 *Car.* 2., but for a hamlet only, which is merely a subdivision of a parish. And it is not left to conjecture that this is not a vill or township maintaining its own poor separately from the parish at large, the rate, which is returned by the *certiorari*, purporting to be made for the whole parish, including *V.* hamlet. In *Rex v. Severn* (a), an appointment of overseers for "the precinct of the Tower" was held bad. It was there argued that, though the precinct were not a parish, the Court might intend it to be a township or vill within the meaning of the 13 & 14 *Car.* 2.: but THE COURT said, "As it is not expressly called a township or vill in the appointment, the Court ought not to intend that it is a township or vill, in order to make an appointment good which is not warranted by that statute." — LORD KENYON C. J. It is objected that this was not a township or vill, but only a hamlet: but "vill" and "hamlet" are in common acceptance used as synonymous terms. If indeed the justices at the Sessions had stated specially in their order that this was not a vill, we should have been bound to quash the order of appointment; but as it may be a vill (b), we are now to intend (c) it for the purpose of supporting the order.

66. *Rex v. Watson*, *H. T.* 46 *G. 3.* 7 *East*, 214. — This came on upon a rule to show cause why an order of Sessions, disallowing the appeal of the defendant against a rate for the relief of the poor of the township of *B.*, in the parish of *B.*, in the county of *D.*, should not be quashed for the insufficiency of it. The appellant, who was an occupier of lands in the said township, appealed to the Sessions against the rate, on the ground that the township of *B.* was not in point of law entitled to maintain its own poor by a separate rate made upon it, apart from the rest of the parish of *B.*; but that the township of *B.*, together with the townships of *N.*, *S.*, and *C.*, (all of which townships are situate within, and together constitute, the parish of *B.*,) ought to maintain their poor conjointly by one general rate for the whole parish. But the Sessions disallowed the appeal, subject to the opinion of this Court on the following case: Previously, and up to the year 1739, the six several townships in the parish of *B.* were united, and the poor of the parish were maintained by one joint and general rate, made by the four churchwardens and two overseers appointed for the whole parish, upon the occupiers of rateable property within the same. From 1739 to 1753 it does not appear by what rate the

(b) *Velindre* is the *Welsh* word for vill.

(c) *Vid.* *Salk.* 501. "If a place be named generally, that place shall be taken to be, and intended, a vill."

poor of the parish were maintained, or how the overseers of the poor were appointed during that period; but since 1753 to the present time the parish has been divided into six townships, and the poor of each township have been maintained by a separate rate made upon each respective township, and separate overseers of the poor have been appointed for each township. The parish of *B.* has rather decreased in population; but the decrease has been principally in the township of *B.* Two orders for the removal of paupers have been made, one from the township of *B.* to the township of *N.*, dated the 17th of *July*, 1798, and the other from the township of *N.* to the township of *B.*, dated 13th of *November*, 1798; which orders of removal were acquiesced in. The rental of the rateable property in the township of *B.* appears by the present rate to be 390*l.* 2*s.* The parish of *B.* is five miles in length and three miles in breadth. Constables have been appointed in each of the six townships. — When this case was called on, LORD ELLENBOROUGH having asked why the Sessions did not find the fact, whether or not the parish of *B.* could have the benefit of the stat. 43 *Eliz.* c. 2., which he said was a fact for them to decide, and not to be left to the Court to presume from other evidence (*a*); COXST referred to *Peart v. Westgarth* (*b*), *Rex v. Horton* (*c*), *Rex v. Leigh* (*d*), and that class of cases, where the Court had decided the same sort of question upon general evidence of the circumstances and usages of the parish, showing that it could not have the benefit of the statute, without a precise finding of the fact; and he said that by dismissing the appeal in this case, the Sessions have in effect drawn the conclusion that this parish cannot have the benefit of the statute of *Eliz.* — LORD ELLENBOROUGH C. J. If I were to draw any conclusion from the facts here stated, it would rather be the contrary conclusion: for down to the year 1759 it is certain that the parish had the benefit of the stat. 43 *Eliz.*, and it does not appear but that they had the same down to 1753; and since that time it appears that the population of the parish has decreased: from all which I should be led to conclude that they might the more easily have the benefit of the statute. I know that different opinions have at different times prevailed as to the better policy of providing for the poor in larger or in smaller districts; but I had rather guide myself by the words of the act of parliament, and by the fact, than by any fluctuating policy, which sometimes leans one way and sometimes another. Whether a parish can or cannot have the benefit of the statute is a fact, which the Sessions ought to find upon all the circumstances laid before them, and not leave us to presume it how we may. Then have the Sessions here found the fact; or have they stated those facts from whence we must necessarily see that the parish cannot have the benefit of the statute? They have not done either. The case must go back to them to find the fact. The enacting words of the statute 13 & 14 *Car.* 2. c. 12. § 21., though general, must be taken to refer to parishes so circumstanced. — LAWRENCE J. observed, that in *Rex v. Leigh* (*e*), it did not appear but that even prior to the time there mentioned the poor of the parish had been provided for under the stat. 13 & 14 *Car.* 2. c. 12. § 21.; from whence it might be inferred, that the parish never had had the benefit of the statute of *Eliz.*: whereas here it was found, that

1759, and from thence to 1753, it was uncertain how the poor were maintained there, and that from the latter period the poor had been maintained separately in the townships; but that the population was decreased.

(a) *Ante*, pl. 64.

(b) *Ante*, pl. 54.

(c) *Ante*, pl. 61.

(d) *Ante*, pl. 63.

(e) *Ante*, pl. 63.

Although a parish might not have had the benefit of the stat. 43 Eliz. c. 2. before and at the passing of the stat. 13 & 14 Car. 2. c. 12; but perhaps at that period, and certainly for a long course of years antecedent to the year 1773-5, maintained its poor in separate districts; yet it was competent to the parishioners at the latter period to cease acting under the statute of Car. 2. and to recur to the general provision of the stat. 43 Eliz. by maintaining their poor as one entire parish; and having done so from the year 1775, the Court refused a mandamus to the justices of peace to appoint separate overseers as before that time.

(a) See *Rex v. Walsall*, post, pl. 68.

prior to the year 1739 they always had the benefit of it. — *Pra Curiam*: Let the case go back to the Sessions to be re-stated.

67. *Rex v. Palmer* (a), *E. T.* 47 G. 3. 8 *East*, 416. — A mandamus was prayed for to the defendants, commanding them to appoint two or more overseers of the poor within that part of the parish of *W.* which lies in *Wilts.* The facts of the case are sufficiently detailed in the judgment of the Court as delivered by — LORD ELLENBOROUGH C. J. This was an application for a mandamus to appoint separate overseers for the three several districts and divisions within the parish of *W.*, in the several counties of *Berks* and *Wilts.*, under the stat. 13 & 14 Car. 2. c. 12. § 21., upon the alleged ground that the inhabitants of that parish “*had not nor could*” reap the benefit of the 43 Eliz. Whether the parish had, or could have, the benefit of the statute 43 Eliz. at the time of the passing of the statute 13 & 14 Car. 2. appears doubtful upon the evidence laid before us in the affidavits on both sides. From the bonds of indemnity given by one part of the parish to another, during the early part of the seventeenth century, prior to the year 1638, it is clear that the whole parish did not then maintain its own poor jointly, and as a parish. In the year 1638, which is a period nearest to the year 1662, the date of the statute 13 & 14 Car. 2., it appears that the Sessions made an order for a joint rate; and if that order were obeyed, (as in the absence of contrary evidence it may be presumed to have been,) the mode directed by the statute 43 Eliz. was more likely to have been acted under, at and immediately after the time of passing the statute of *Charles*, than any other less authorized mode of maintaining their poor. But, supposing it were otherwise in point of fact, and that the parish, at the time of passing the statute of Car. 2. was not in a situation conveniently to reap the benefit of the statute 43 Eliz., i. e. by a joint parochial rate for the maintenance of all its poor, under the joint management of not more than four overseers in the whole; and supposing the poor to have been immediately *thereafter* maintained in three separate districts and divisions, as it is now sought that they should be; the question is, whether it were not competent to the parish, if they found it more convenient so to do, to cease acting under the statute of Car. 2. and to recur to the provisions of the statute 43 Eliz. There is nothing in the language of the act which imports that parishes were, in this respect, then immediately to adopt that mode of maintenance for their poor, from which they should not afterwards be at liberty to depart. No decided case has excluded this provision from receiving a prospective construction. The words “*have not*” were of themselves sufficient to cover any then actually existing case in which parishes did not reap the benefit of the statute 43 Eliz. The word “*cannot*,” though in its strict grammatical sense, it applies properly to present time, yet familiar instances occur in which the word is used prospectively: and as the varying circumstances of parishes may make the provisions of the statute of Car. 2. as necessary in respect to future cases, as those which existed at the time of passing the act, we think sound construction requires that it should be deemed applicable to both descriptions of cases. The language of Lord *Kenyon* in *Rex v. Leigh* (b), which goes furthest on this head, is rather applied to the expedient exercise of the discretion of the Court, than to its legal powers in this parti-

(b) *Ante*, pl. 63.

color. Speaking of the time of passing the statute of *Car. 2.* he says, "if the parish were properly divided at that time, nothing which has happened since will induce us to make any innovation." And *Buller J.* in the same case considers the discretion of the Court, in assisting parishes to act under the one statute or the other, as fit to be governed by considerations of convenience and policy, and not as concluded or bound down by the actually existing practice at or immediately after the passing of the statute of *Car. 2.* According to the construction of the statute now adopted by us, the word *cannot* must be read as *may not*; and the words "shall after the passing of this act be maintained," &c. must be understood, not merely as imperative in respect to the then existing cases, but as applicable to other parishes also, which in future might be similarly circumstanced; and as ceasing to be imperative when any parish might reap the benefit of the statute 43 *Eliz.* Considering it, therefore, as a question open for our discretion, whether we will grant a mandamus for the purpose of introducing a different mode of managing the maintenance of the poor than that which has obtained in this parish, without all question, for the last thirty-two years, and probably even at and after the time of passing the statute of *Car. 2.*, we cannot in this case discover any such preponderating reasons of convenience or policy, as should induce us in the exercise of a sound discretion so to interfere; and, in the absence of such reasons, we think that the rule *nisi*, which has been obtained in this case, should be discharged.

68. *Re v. Walsall, M. T. 59 G. 3. 2 B. & A. 157.*—*Puller* had obtained a rule to show cause why an order of appointment of four persons to be overseers of the parish of *W.* in the county of *S.*, should not be quashed for insufficiency. It appeared from the affidavits in support of the rule, that the parish of *W.* consisted of two districts, one called the township of the *Borough*, and the other the township of the *Foreign*, both of which, as far back as the 13 & 14 *Car. 2. c. 12.*, had separately maintained their own poor; that they had had separate rates, accounts, and workhouses, and separate appointments of overseers, constable, and headborough; that there had been parish indentures, executed by the officers of the *Foreign*, so far back as 1689; certificates of settlements, given by the *Borough* to the *Foreign*, as far back as 1700; and orders of removal from the *Borough* to the *Foreign*, and vice versa, and appeals thereon, as far back as 1744, and as late as 1815. The affidavits on the other side stated, that prior to the statute of the 13 & 14 *Car. 2. c. 12.*, the parish of *W.* received the benefit of the 43 *Eliz. c. 2.*; and that the poor of the *Borough* and *Foreign* were maintained by a general rate over the whole parish; that on the passing of the 13 & 14 *Car. 2. c. 12.*, it was agreed, that the *Borough* and *Foreign* should separate in the maintenance of their poor, and that separate overseers should be appointed, upon condition that the rateable property in the parish, whether situate in the *Borough* or *Foreign*, should be rated to the relief of the poor of that district in which the occupier resided. They also stated, that both townships had been incorporated by the name of the *Borough* and *Foreign* of *W.*, and that the jurisdiction of the magistrates extended over the whole parish; that there was but one parish church for both, which was repaired by

The two districts of which a parish consisted had, from the 43 *Eliz.* down to the 13 & 14 *Car. 2.* maintained their poor jointly, and at the time of the passing of the latter act agreed to separate in the maintenance of their poor, and that separate overseers should be appointed, upon condition that the rateable property in the parish, whether situated in the one or the other district, should be rated where the occupier resided. In consequence of that agreement they had ever since uniformly maintained

their own poor separately, and had had separate overseers, constables, &c. Held that this clearly showed that the parish, at the time of the agreement could not reap the full benefit of the statute of Eliz., and that, therefore, the separation of the two districts was valid, and that an appointment of overseers for the whole parish was now bad. Held also, that the agreement consisted of two distinct parts, and that the invalidity of the latter part, as to rating property not situate within the district rated, did not affect the question on the former part.

a joint rate; that a rate of 1s. in the pound averages in the *Borough* 125l., and in the *Foreign* 400l.; and that in the last year, there were thirty-two of the former, and eleven of the latter; and that the parish now could have the benefit of the 43 Eliz. by the joint maintenance of their poor; that by so doing, a considerable expence would be saved, and the poor would be more comfortably provided for. It appeared, that on a previous appeal against the poor's rate for the *Borough*, argued in the Court of K. B., in 1813, the latter part of the agreement, stated in the affidavits, was held to be invalid; and it was in consequence of this, that the joint appointment of overseers for the whole parish, now in question, was made. — ABBOTT C. J. The Court is now called upon to unite two townships which, as far back as human memory can go, have been in all respects separate and distinct; and indeed the documentary evidence stated in the affidavits carries the separation back for a century and a half. Every circumstance that could possibly exist to show that these were distinct townships for all purposes is found in the present case. The fair result of the whole evidence is this, that at the time of the passing of the 13 & 14 Car. 2., two distinct opinions were entertained by the inhabitants of this parish. The first of which was, that they could not reap the benefit of the 43 Eliz.; and the second, that property should be rated to the poor in the township where the occupier resided. On the latter point their opinion has now changed; and they think that the property now ought to be rated according to the rules of law. But that does not show that they were wrong in the former opinion that the parish could not reap the benefit of 43 Eliz., for the two parts of the agreement are perfectly distinct. I think, therefore, that this case furnishes satisfactory evidence that this parish could not and cannot reap the benefit of the statute, and that this appointment of overseers for the whole parish is bad. — BAYLEY J. I am of the same opinion. The Court ought not, except on the plainest grounds, to disturb a practice which has prevailed for so long a series of years. The case of *Rex v. Palmer* (a), only decided that where a parish has, with the consent of all its districts, re-united itself, that re-union is valid in law. But this is an attempt to recede from the agreement to separate without the consent of both parties. The meaning of the words "benefit of the statute of 43 Eliz." is "the full and ordinary benefit of that statute," and if a parish cannot receive that full and ordinary benefit, it comes within the stat. 13 & 14 Car. 2. Now where, in point of fact, a parish has long been separated, and has had separate overseers, &c., that is surely very strong evidence to show that it could not originally derive the full and ordinary benefit of the 43 Eliz. As to the agreements, I fully concur with my Lord C. J. that it consists of two distinct parts, and that any alteration as to one part will not affect the other. I think, therefore, that this rule should be made absolute. — Rule absolute.

(a) *Ante*, pl. 67.

VIII. *Of the Appeal and Certiorari.*

See stats. 43 Eliz. c. 2. § 6. (a) 17 G. 2. c. 38. § 4.

69. *Case of the Borough of Warwick, M. T. G. 2. Str. 991.*— It was held, that an appointment of overseers may be removed before an appeal to the sessions; for the rule laid down in *Salkeld* extends only to the case where there is a limited time for appealing, as to the next Quarter Sessions; but the 43 Eliz. c. 2. § 6. is not so restrained, and consequently it cannot be said the time for appealing is out. But if an appeal from an appointment be lodged, there can be no *certiorari* (a) till the Sessions have made a determination, and a *certiorari* brought pending such appeal shall be superseded.

The party grieved may remove the appointment before next session, if no appeal be lodged.

(a) See *vide post*.

70. *Rex v. Harman, H. T. 12 G. 2. And. 343.*— A *certiorari* having been granted for the removal of several orders for appointing overseers, and also for convicting the persons so appointed for refusing to act in the office, a *supersedeas* was now prayed *quia erronee emanavit*; and argued, that an appeal lies in this case, by 43 Eliz. c. 2. § 6. and that a *certiorari* doth not lie till an appeal is brought, for that the party cannot pass over a sessions *per saltum*.— LORD HARDWICKE C. J. said, that where an appeal lies, a *certiorari* granted may be taken off the file. It was also objected, that in this case, there being several orders, there ought to have been more than one *certiorari*. But it was held by the whole Court, that where an order of justices is made, and there is but one party who hath a right to appeal, (as in the case of orders of appointment, and of orders made upon an overseer's absence or negligence in the execution of his office,) and he waives his privilege of resorting to the sessions, and elects to come to this Court, a *certiorari* lies for removing the orders, there being no reason against the party's being received; for the authority of this Court is never taken away by an act of parliament, without special words therein for that purpose. But where there are two parties having a right to appeal, and the time of appealing is fixed by the law, (as in the case of settlements, where the time is limited to the first sessions,) it is not reasonable to grant a *certiorari* till the time has elapsed; and so is the rule in *Salk. 147.* to be understood. And in the present case, there being no time set for appealing, if it be a sufficient objection to a *certiorari* that an appeal lies, a *certiorari* can never be granted.— LEE C. J. also said, there may be cases so circumstanced, where a *certiorari* has been and ought to be denied; and such was the case cited of *Rex v. Warwick*, where a *certiorari* was prayed pending a sessions, and the party had made his election by appealing thereto. And he said that he would not assert that an appeal does not lie as well upon an order for refusing to act as overseer, as on an order for negligence in the office; the words of the statute being very general. As to the other objection, the Court said, there was no weight in it; as all the orders removed related to the same persons, and the same matter.— The motion was therefore denied.

A *certiorari* lies to remove an order appointing overseers, although 43 Eliz. c. 2. § 6. give an appeal, and no appeal has been made.

See *Rex v. Stanley, Cald. 172.* accord.

(a) *Vide post*, pl. 290. *Rex v. Cooke*, in what case this statute shall be considered as repealed by the 17 G. 2. c. 38. with respect to appeal against poor's rates.— *Vide also Rex v. Mickelfield, Hilary, 25 G. 3. post. pl. 291.*

But the appointment cannot be confirmed on a *certiorari*, till after the next sessions, as it would deprive the party grieved of his right to appeal.

(a) *Ante*, pl. 25.

To state, upon an appeal, that those against whose acts you complain are justices, is so far an admission of their jurisdiction.

71. *Rex v. Howlditch*, T. T. 13 & 14 G. 2. MSS. 2. — An order for appointing overseers made by two justices was returned by *certiorari* into the court before the next Quarter Sessions was held, so that there was no opportunity of appealing. It was moved that it might be affirmed, unless cause was shown before the end of the Term. — *SED PER CURIAM*: This seems to be a manifest injustice, and an attempt to take away the benefit of appealing from the persons who are entitled to it. The party who has the right of appealing may remove it, if he thinks proper, and so was *Rex v. Harman*. (a) — The rule was enlarged till the next term, when it came on to be argued again. It was stated, that two justices within a month after *Easter*, viz. on the 28th of April, 1740, appointed A and B to be overseers of the poor of W., and it being notorious that they were not within the act, not being householders, it was intended to appeal to the Sessions. Eight days afterwards, viz. May 6th, the justices appointed two new persons, who acted under that appointment, and both their orders were removed by *certiorari* before the next Quarter Sessions was held. In *Trinity* Term last it was moved to confirm the said appointment, and a rule was granted, which was enlarged to this term; and it being again moved to confirm the first appointment, it was on the other side, in support of the second appointment, prayed that the rule might be enlarged, to give them an opportunity of moving to quash the *certiorari*, because, being before the next Quarter Sessions, they were hindered of their privilege of appealing. — The rule was enlarged accordingly.

72. *Rex v. Flisher*, and *Rex v. Towill*, M. T. 22 G. 3. Cald. 135. — T. T. and N. F. were appointed overseers of *Taunton St. Mary*, in the borough of *Taunton*, by J. H. and T. F., who claimed to be mayor and justices of the corporation of *Taunton*. The parish of *Taunton St. Mary* appealed to the General Quarter Sessions of the county against this appointment. The appeal stated that overseers were appointed by J. H. and T. F., who claimed to be mayor and justices of the corporation of *Taunton*. On an appeal against such appointment to the General Quarter Sessions of the county, the jurisdiction of the Sessions was questioned by (a) the respondents, upon the ground of their having, as a corporate body, an exclusive jurisdiction. In order to prove this, they produced to the Court a list of names (in which number were those of J. H. and T. F.) as members admitted into the body corporate, written in a book usually kept by the town clerk for such purpose, in which there were no stamps. No evidence was offered of an admission of J. H. and T. F., or of any other person claiming to be of the body corporate, upon stamped paper. — The question for the opinion of the Court of King's Bench was, Whether evidence of admission upon unstamped paper ought to have been received by the Sessions? — LORD MANSFIELD: There can be no appeal to the Quarter Sessions from the acts of persons calling themselves justices, and who are not so. If persons exercise a jurisdiction who are not entitled, the whole is a nullity, and the party aimed at need not pay any regard to it. — WILLES J. In their notice

(a) That the Sessions have a power 1 Str. 301. and *Rex v. Stosfield*, 4 T. 2. to look into the jurisdiction of the 601. justices, see *Albrighton v. Skipton*,

they state them to be justices. — BULLER J. The appeal is made, because the justices have appointed upon the ground of jurisdiction; and, at the hearing of the appeal, you say, they have no jurisdiction. You have concluded yourselves. — ASHHURST J. concurring, the rule was made absolute, and order of Sessions quashed. Vide 1 Str. 300.

73. *Rex v. Forrest*, H. T. 29 G. 3. 3 T. R. 38. — An appeal was made to the Quarter Sessions by J. A. and two other persons, in behalf of themselves and the rest of the parishioners of St. P., against a warrant of appointment made by four justices, of T. F., J. P., and one J., to be overseers of the poor of that parish. On hearing the appeal it was objected by the respondents, that no such appeal from parishioners not included in the appointment lay; which objection was overruled. A rule having been obtained to show cause why the order of Sessions should not be quashed, it was contended, that nobody but the person who was appointed overseer could appeal under the 43 Eliz. c. 2. § 6.; that no other line could be drawn, otherwise every parishioner might appeal, and even upon separate grounds; and that it never could have been the intention of the legislature to open such a door to litigation. — LORD KENYON C. J. The clause in the 43 Eliz. c. 2. § 6. is conceived in the most general terms: it enacts, "that if any person or persons shall find themselves aggrieved, &c. he may appeal." A case may reasonably be imagined to exist, in which the parishioners would feel themselves aggrieved by the appointment of overseers, when we recollect the enormous sums of money which are received for the relief of the poor; as, for instance, if the magistrates were to appoint persons who were insolvent. The other Judges concurred, that no doubt could be entertained on this question. — Rule discharged.

The parishioners, as well as the overseers who are appointed, may appeal to the sessions, under the 43 Eliz. c. 2. § 6.

74. *Rex v. Great Marlow*, H. T. 42 G. 3. 2 East, 244. — A rule was granted in the last term, calling upon the prosecutor to show cause why a certain warrant of appointment of J. F. to be one of the overseers of the poor of the parish of G. M., should not be quashed, upon notice of the rule to be given to the said J. F. — LAWRENCE J. The jurisdiction of this Court to examine into the legality of the appointment in the first instance may arise on this, that if there were a proper number of overseers legally appointed before, according to the provisions of the statute, a subsequent appointment of another overseer is merely void; the magistrates having no jurisdiction to make it. And the want of jurisdiction in the magistrates below is always a sufficient ground for the interference of this Court. — THE COURT, being desirous of making inquiry how the practice stood relative to the hearing of affidavits in support of objections against appointments of magistrates, which, upon the face of them, were good, directed the matter to stand over: and on this day, after hearing cause shown upon the affidavits, in answer to the rule, when the former preliminary objection was also insisted on, they delivered their opinions. — GROSE J. When this matter was first mentioned, I thought that the objection should have been made on appeal; but I find now that the appointment may be brought hither by certiorari in the first instance, for the purpose of being quashed. And upon looking into the affidavits, which upon inquiry is found to be the usual practice, the appointment appears to be bad on both the grounds of objection

A person improperly appointed overseer must appeal to procure his discharge; but on certiorari the facts may be disclosed to the court by affidavit.

taken. — LAWRENCE J. The objection to looking into affidavits upon such a subject, for the purpose of founding an objection to the appointment, was never taken before. The *Bridgewater's* cases, *Rex v. Holloway* and others, and *Rex v. Beale* and others, *E. & T.* 14 G. 3. and the *Milbourne Port* cases, *Rex v. Baunton* and others, and *Rex v. Scott* and others, *M. & H.* 15 G. 3., were all motions to quash appointments of overseers, which came on upon affidavits, besides the cases mentioned at the bar. I find it also to be the common practice with respect to orders made by commissioners of sewers. — LE BLANC J. The Court has been in the habit of entertaining motions of this sort on affidavit; which brings the question to the validity of the appointment in the present instance.

An appointment by two justices of overseers of the poor, may be removed into this Court by *certiorari*, without appealing against it to the quarter sessions, and this Court will go into the question upon affidavit, whether the place for which the appointment is made be a township or vill; and if it appear by the affidavits, that it is not, and be not stated to be such, or that it is reputed to be such, the Court will quash the appointment.

75. *Rex v. Standard Hill*, *M. T.* 56 G. 3. 4 *M. & S.* 378. — By order of two justices, two persons named therein, substantial householders of the township of *S. H.*, were appointed overseers of the poor of the said township; which order being removed, a rule *nisi* was obtained for quashing it. The affidavits in support of the rule set forth, that *S. H.* is a close or piece of ground within the precincts or liberties of the castle of *N.*, which before the year 1807 was let out in gardens, but in that year was sold by the Duke of *N.*, the owner of the castle, and then, for the first time had several dwelling-houses built upon it. Before that time the high constable for the hundred, within which the castle is situate, used to issue his precepts, and serve them at the lodge of the castle, and obtained returns to such precepts of the inhabitants living within the precincts, from the porter at the lodge. After the erection of the houses the high constable directed the porter to attend a meeting of magistrates for the county to be sworn in constable, which he accordingly did in September 1808, and was upon the application of the said high constable appointed and sworn in constable for *S. H.* for the year ensuing; but this was done without the knowledge of the duke, or his steward; or any of the inhabitants of *S. H.*, who refused to make good to him payments which he had made to the high constable for assize and sessions bills, returns of taxes, &c., alleging that they were not liable to the appointment of any constable, or any other civil or parochial officer, or to the payment of any such charges; and in consequence of orders from the steward, a constable had not been sworn in or acted since April 1814. *S. H.* and the castle, with all its precincts and liberties, were always deemed to be extraparochial, and no part of it was ever reputed to be a township or vill, or assessed, or liable to be assessed, to the relief of the poor, or ever had a constable, or overseers of the poor, or other civil officer, appointed, except as above stated. A chapel was built on *S. H.* by private subscription, for the celebration of divine service according to the rites of the church of *England*, in pursuance of an act of the 47th of the King, intituled "An act for erecting a chapel on certain extraparochial land, called *S. H.*," &c. which act contained a proviso that nothing therein should extend to make any new parish, or to alter or affect any tithes, &c. or any rates, taxes, assessments, or other payment whatsoever. In answer to this it was stated upon affidavit, that *S. H.* now consisted of more than seventeen dwelling-houses, occupied by substantial householders, eligible to serve the office of overseer, and that there

were various other houses there occupied by respectable house-keepers, and other buildings in progress, and the number of its inhabitants was upwards of 140, and upwards of 36 menial servants were resident there. — ELLENBOROUGH C. J. The extensive consequence to which a decision founded upon the argument of to-day would lead, makes one pause, and require that it should be distinctly stated upon the affidavit that this is a vill or township *de facto*. For the immediate consequence of our holding this to be a vill for which overseers ought to be appointed, would be that overseers must be appointed for all inns of court, and every collegiate or ecclesiastical establishment, which would work a great alteration in the laws relating to this subject. This consideration makes me unwilling to pass the ancient limits, unless warranted by positive affidavit; and, therefore, until I find it stated that this is a vill, I shall defer coming to such a conclusion as may lead to so extensive a consequence. — LE BLANC J. Where we see that the order which is removed into this Court has been made without any foundation to support, I think we ought to quash it, without giving the parties the opportunity of going to the sessions. I cannot find any thing in the affidavits that justifies the calling this either a township, hamlet, or vill, for the place appears to be part of the old castle of *Nottingham*. The Court then, I think, is bound to interfere in the first instance, and save the parties from the chances of what might happen at the sessions. — Order quashed.

76. *Rex v. Gordon*, E. T. 58 G. 3. 1 B. & A. 524. — A mandamus had issued on the application of the churchwardens and overseers of the parish of *W. B.*, in the county of *Wilts*, commanding *G.*, mayor of the borough of *W. B.*, and also a justice of the peace within the borough, to allow, confirm, and sign a rate or assessment, made by the churchwardens and overseers of the parish, for the relief of the poor of the parish (the borough lying within and being part and parcel of the parish), and which rate had been allowed by two justices of the peace for the county, as to so much as respected that part of the parish which lies without the borough, and which had been tendered to the defendant as such mayor and justice, to be by him confirmed, allowed, and signed, as far as related to the borough, and which he had refused to do, to which mandamus the following return was made: That the borough of *W. B.* is an ancient borough, consisting of a mayor, two aldermen, and twelve capital burgesses, and that the mayor and two aldermen are justices of the peace within the same; that the borough lies within and is part and parcel of the parish of *W. B.*, and that the rest of the parish is not nor ever was within the borough or its liberties; that the whole parish of *W. B.* lies within the division or hundred of *K.*; that the mayor and aldermen of the borough, ever since the 43 *Eliz.*, have been accustomed to appoint the overseers of that part of the parish lying within its liberties to act for the borough, and that the justices of the county, acting for the division of *K.*, have always appointed the overseers of the poor for that part of the parish lying without the borough, and that these latter overseers have always been accustomed to make separate rates and assessments for the relief of the poor of that part of the parish lying without the borough, and the overseers for the borough to make separate rates also for the relief of the poor of the part of the parish lying within the borough. The return then

Where a parish contained within itself a borough not so co-extensive with it, and the mayor of the borough, on a return to a mandamus for allowing a poor rate, made by the churchwardens and overseers of the whole parish, stated a custom which had existed since the 49 *Eliz.* c. 2. of appointing separate churchwardens and overseers, and of making separate rates for the borough, and for those parts of the parish which lay without the borough, it was held that such custom was invalid, and the return was quashed accordingly.

stated that the defendant was mayor of, and one of the justices of the peace for the borough, but not for the county, and that the rate in question was made by the churchwardens of the parish, and by the overseers of the poor appointed by the justices of the county for that part of the parish lying *without* the borough, and that the rate was made by them only, and for the relief of the whole of the poor of the parish, to be levied on the whole of the inhabitants; and that certain persons therein mentioned were, before the making of the rate in question, overseers of the poor of the borough, and as such had tendered to the defendant a rate duly made by them as such overseers, for the relief of the poor of that part of the parish, lying within the borough, and that he had allowed and confirmed that rate which was published and collected from that part of the parish lying within the borough; and applied towards the relief of the poor there. And that for these reasons he had not allowed and confirmed the rate in question.—**LORD ELLENBOROUGH C.J.** The 9th section of the 43d of *Eliz.* specifies and enumerates many acts that may be done separately where a parish is partly within a town corporate and partly without; but it does not mention the act of making rates. Now this of itself affords a very strong presumption that the legislature contemplated the making of one entire rate for the parish; and, besides that section, after directing in what way the churchwardens and overseers are to be appointed, enacts expressly that they shall, without dividing themselves, execute their office in all places within the said parish. That shows distinctly that one rate only for the whole parish must be made, and prohibits the making of separate rates by the separate bodies of churchwardens and overseers, as has been, according to the custom stated in this return, done within this borough. Notwithstanding, therefore, the case cited, I think that this return to the mandamus is bad, and that it must be quashed.—Return quashed.

IX. Evidence of Appointment.

No parol evidence can be given of an appointment of overseers.

S. C. 1 Sem. Cases, 141.

(a) 10 Mod. 8.

An indenture of apprenticeship, made 1797, having been signed only by one overseer of the appellant

77. *Rex v. Arnold*, T. T. 4 G. 1. Str. 101.—Indictment against defendants, for that they being churchwardens and two others overseers *debito modo appunctuat*, did refuse to join with the overseers in making a poor's rate. And the CHIEF JUSTICE held the prosecutor to show an appointment of the overseers under the hands and seals of two justices, as the statute requires. And he rejected parol evidence, because he said it must be produced that he might judge whether it was a sufficient appointment. He quoted *Willoughby v. Dixey*, where a will entered in the spiritual court books, to be delivered out to the executor, was refused to be read, till application and refusal of the executor was proved. And the same in *Sir Edward Seymour's* as to a deed. (a) —The defendant was acquitted.

78. *Rex v. Stoke Golding*, M. T. 58 G. 3. 1 B. & A. 173.—Removal from S. G. to O. Order quashed, subject, &c.—The birth of the pauper at O. having been proved, the appellants put in an indenture of apprenticeship, by which the pauper was bound by the parish of O. in 1797, to F. C. of S. G., and under which he served six years and a half. To this indenture the respondents objected, that it was signed by one churchwarden and one over-

seer only; and to show that only one overseer had been appointed for that year in which the indenture was executed, they called for the *appointments* of overseers, having before given the appellants notice to produce all vestry books and writings in their custody or power, touching the *appointments* of overseers of the poor for the parish of O., and particularly the *appointments* of the overseers for the years 1796, 1797, and 1798. One parish book was produced. It did not apply to the year 1797. That was the only book in existence. The parish officer who produced it swore that no *appointments* were kept. The respondents then called a witness, who had lived in O. for seventeen years, including the year 1797, and had served the office of overseer five or six times; he said there was only one overseer in those years, and never was more than one overseer. To this it was objected, that the *appointments* being in writing, parol evidence could not be admitted. The Court were of this opinion.—LORD ELLENBOROUGH C. J. The question is, whether the justices below have done wrong in rejecting the parol evidence. This is clear, that the parol evidence could not be admitted until the case was ripe for the admission of secondary evidence; now it could not be considered as ripe for that purpose, until the parish of S. G. had exhausted all the proper means of procuring the primary evidence. Have they done this? First, as to the *appointment* itself, they gave a notice to the parish, and supposing the parish had the actual custody, that notice would have been sufficient, but that does not appear. Have they then the legal custody? Certainly not; for the legal custody is in the officer, who is the person most interested in the instrument, and who requires its production as a sanction for those acts which he may be called upon to do under its authority. Now here there has not been any notice to the overseer himself. They were certain of him, and through him they might have made their way to procuring all the others, if more than one had been appointed. I think, therefore, that as in this case there has been an omission of the means of exhausting the primary evidence, recourse could not be had to that of a secondary nature, and therefore I cannot feel or satisfy myself, that the sessions have not done right in rejecting it.—BAYLEY J. The party here had not entitled themselves to go into the secondary evidence. This is a removal from S. G. to O., S. G. relies on a birth settlement, in answer to which the other party set up a service under an indenture in S. G.; that indenture purports to be signed by one overseer only; that will do, unless it appear that more than one was appointed. One overseer is named, he is not called, how is the Court to know, whether more than one has been appointed? For that purpose, they must look at the *appointment* itself; that ought to be in the possession of the party to whom it was given, for whom, and whose acts, it was to be a justification; they ought to have applied to him; if he had been called, or if they had been entitled to give his conduct in evidence, that might have done; it would not have been necessary to have called in aid the statute 54 G.3. c.170. because *non constat* that the overseer of the year 1797 was overseer then, and one of the parties to the appeal. If the *appointment* had been produced, and on the face of that it had appeared that only one overseer had been appointed, that might have thrown the proof on the other side. In the absence of any proof of this kind,

parish, the respondent parish, to show that only one had been appointed that year, called upon the appellants to produce the original *appointment*, (having given them notice to produce all books and writings relating thereto); one book only was produced, and that was not for the year 1797. Held that the respondents, not having taken any means to procure the testimony of the overseer himself, (who must be presumed to have the custody of the original *appointment*), were not entitled to give secondary evidence of its contents.

It seems to me that the secondary evidence was not admissible. — ABBOTT J. I am of the same opinion. The material question at the hearing of this appeal was, whether in the year 1797, one person had been appointed overseer, or more than one; it was for the interest of S. G. to contend that only one had been appointed. As the act requires more than one, the Court must presume that the act has been complied with. The Sessions, therefore, were justified in presuming that there were more than one, unless S. G. showed that only one had been appointed. The ordinary proof of this is the *appointment* itself; that is not produced; and the question is, whether S. G. have done enough to dispense with its production; the step they took was to give notice to the parish-officers to produce it. Now the *appointment* is not kept in the parish-chest; the fact, as it appears, is, that it is never kept there. I think, therefore, that the notice was not sufficient; they might have applied to the one overseer; but they did not take any step to that effect; whether he was living or dead, or where he was residing if living, does not appear. It seems to me, therefore, that the parish of S. G. have not taken such measures as were necessary in order to let in the secondary evidence. — HOLROYD J. The law presumes the *appointment* to be in the custody of some of the overseers, who are responsible for all the acts done under it; notice, therefore, should have been given to the party in whose custody the law places the *appointment*; that has not been done; the decision of the Sessions therefore was right — Order of Sessions confirmed.

CHAPTER II.

POOR'S RATE.

- I. *The Statutes relating to the Poor's Rate.*
- II. *Of the Making, Allowing, and Publishing the Rate.*
- III. *For what Time the Rate may be made.*
- IV. *In what Place the Property shall be rated.*
- V. *For what Purpose the Rate may be made.*
- VI. *In what Proportion.*
- VII. *Of the Persons and Property liable to be rated.*
- VIII. *Of levying and distraining for the Rate.*
- IX. *Of the Appeal, and Jurisdiction of the Sessions.*
- X. *Of the Certiorari.*

I. *The Statutes relating to the Poor's Rate.*

See *stat. 43 Eliz. c. 2. § 1. 8. 13 & 14 Car. 2. c. 2. § 22. 17 G. 2. c. 3. § 1, 2, 3. 17 G. 2. c. 38. § 13, 14, 15. 52 G. 3. c. 73. 54 G. 3. c. 170. § 11, 12.*

II. *Of the Making, Allowing, and Publishing the Rate.*

79. The allowance of the poor's rate required by *43 Eliz. c. 2. § 1.* is to be understood of two justices out of sessions; for the Sessions have no original power to order an assessment to be made, but only if it come before them by way of appeal.

The rate must be allowed by two justices. *Ld. Ray. 798.*

80. *Liddleston v. the Mayor of Exeter*, 9 W. 3. *Foley*, 18. — A *mandamus* was granted to the justices of the peace, and to the churchwardens and overseers of the poor for the precinct of the cathedral church at *Norwich*, which is a distinct jurisdiction, to make rates for the relief of the poor.

The overseers of a distinct jurisdiction shall make poor's rates. *S. C. Comb. 422.*

81. *Tawney's Case*, *H. T. 2 Ann. Salk. 531. Ld. Ray. 1013.* — By *Holt C. J.* The churchwardens and overseers, with the confirmation of the justices, may order a sum of money to be levied for the relief of the poor, without the concurrence of the parishioners.

The overseers, with the confirmation of the justices, may make a rate without the

concurrence of the parishioners. *S. C. Holt, 579 8 Mod. 97. 2 Ld. Ray. 1013.* and the *S. P. resolved by Eyre J., in Q. v. St. Michael's, Cornhill, T. T. 9 Ann. Vin. Abr. 425.*

82. *Cobbet v. Mary St. Lincoln's*, 16 *Vin. Abr. 425.* — The order need not set forth, that the justices allowing the poor's rate were dwelling in or near the division where the parish lies.

The order need not state that the justices are of the division.

83. *Rex v. Uttoxeter*, *E. T. 5 G. 1. Mr. Ford's MSS.* — It was adjudged that the allowance of the poor's rate, by two justices, is merely a ministerial act.

The allowance of the poor's rate is a ministerial act. *3 Doug. on Elect. 142. in notis.*

84. *Rex v. Justices of Dorchester*, *M. T. 7 G. 1. Str. 398.* — *Mandamus* was issued to the defendants to sign a poor's rate made by the churchwardens and overseers. Before the return a motion was made to supersede it, for several objections to the fairness of the rate, and that this would be better for the poor

The justices' allowance of a poor's rate is matter of form only.

S.C.Bar. K.B.
82.
1 Sid. 377.

than to reserve the debate of them for a formal return. — *SEN PER CURIAM*: The two justices are necessary to sign the rate only by way of form, for the churchwardens and overseers have the power of making it; and whether it be a fair rate or not, is proper for the jurisdiction of the Sessions, and was never intended for our examination. — The *supersedeas* being denied, the justices returned, that they could not allow the rate, it not being a just and proper rate. — *THE COURT*, having before given their opinion of this upon the motion, ordered an *attachment* against the justices, who thereupon returned, that they had allowed the rate.

And if the overseers refuse to make a rate where it is necessary, they may be compelled by *mandamus*.
Foley, 19.

Justices for the county cannot allow a rate made by overseers of a borough.
2 Burr. S. C. 402.
Cald. 136.
See post, "Appeal."

Justices may be compelled by *mandamus* to allow a poor's rate.
1 Sid. 377.

A poor's rate must be published in the church on the next Sunday after it is allowed.
See this case more fully stated, post, pl. 268.

A poor-rate must show upon the face of it in respect

85. *Rex. v. Barnstaple, H. T. 2 G. 2. 1 Barnard, 137.* — On an application to the Court of King's Bench for a *mandamus* to be directed to the overseers of the poor of B., commanding them to make an *equal rate* — *THE COURT* observed that, although they would not grant a *mandamus* to make an *equal rate*, they might well grant a *mandamus* to make a rate in general, on an affidavit being produced that a rate is wanting; for this Court is the proper jurisdiction to make laws to be put in execution.

86. *Rex v. Folly, T. T. 27 & 28 G. 2. MSS.* — On a *mandamus* to the justices of W. B. to allow a rate, they returned, that ever since the 43 *Eliz. c. 2.* the justices had appointed four, three, or two overseers within that part of the parish which lies within the borough, and that they had always made rates within their jurisdiction; then they say, that the rate was offered to them made by overseers appointed by the justices of the county and not of the borough. — *PER CURIAM*: The return must be confirmed. (a)

87. *Rex v. Edwards, T. T. 7 G. 3. 1 Blac. Rep. 637.* — The defendants were justices of the peace of St. Ives, and had evaded the signing of a poor's rate, in obedience to a writ of *mandamus*, by keeping out of the way, so as not to be served with the writ; and an *attachment* was granted for a contempt.

88. *Rex v. Newcombe, T. T. 31 G. 3. 4 T. R. 368.* — A poor's rate had been made for the parish of H., but it was not published until the third Sunday after it was made. It was contended that, as the statute 17 *Geo. 2. c. 3.* requires the parish-officer to give notice in the church of every rate for the relief of the poor, allowed by justices of the peace, the next Sunday after the same shall have been so allowed, and enacts, "that no rate shall be esteemed or reputed valid and sufficient, so as to collect and raise the same, unless such notice shall have been given;" this rate was a mere nullity, and the justices could not be compelled by *mandamus* to grant a warrant of distress for the non-payment thereof. On the other side it was contended that the object of the act was only to guard against secret and clandestine rates, and that the publication of this rate on the third Sunday made it as notorious to the inhabitants as if it had been published on the first Sunday after its allowance. — But *THE COURT* held, that the rate was for this reason invalid; and that it was a radical defect in the rate itself, which nothing could cure.

89. *Rex v. Aire and Calder Navigation, E. T. 5 G. 4. 2 B. & C. 713.* — Upon an appeal, by the undertakers of the Aire and Calder Navigation, against a rate or assessment made for relief of the poor

(a) But see *Rex v. Gordon, ante*, pl. 176.

of the township of C. the Sessions confirmed the rate, subject to the opinion of this Court, upon the following case. On the rate in question being produced, it appeared, that the property in respect of which the defendants were rated was specified; but with respect to all the other individuals charged thereby, it altogether omitted to state the property in respect of which they were rated. The first of those assessments was as follows:

occupier,	rate,	assessment,
<i>Astion Joseph</i> ;	1 <i>l.</i> 8 <i>s.</i> 9 <i>d.</i> ;	2 <i>s.</i> 10 <i>d.</i> ;

of what property the assessment is made upon each individual charged by the rate.

and all other assessments were in a similar form. It was objected, that it should have appeared by the rate, in respect of what property the assessment was made, and that objection was specifically pointed out by the notice of appeal. The sessions overruled this objection, subject to the opinion of this Court. The case then set out the discussion which took place, as to the liability of the defendants to be rated in respect of the property for which they were charged; but it became immaterial, as the Court decided the case upon the first point.—ABBOTT C. J. The objection to the form of the rate is decisive. If any person wished to appeal, on the ground that another was under-rated, how could he tell in respect of what property the rate was imposed?—Order of sessions quashed.

III. For what Time the Rate may be made.

90. *Tracy v. Talbot*, T. T. 3 Ann. before HOLT C. J. *Ni. Pri. Salk.* 532.—An inhabitant cannot be rated for the whole quarter, for poor's rates are to be assessed *monthly* by the statute; for by this means a man cannot move in the middle of a quarter but he must be twice charged; but the jury said, the custom was otherwise. (a) —And now by 17 G. 2. c. 38. when any person shall come into or occupy any premises from which any person assessed shall be removed, or which at the time of making the rate was empty, every person, so removing or coming in shall pay the rate in proportion to his respective occupation.

Poor's rate cannot be assessed for a whole quarter.
S. C. 6 Mod. 214.
Holt, 581.
3 Salk. 260.

91. *Rex v. Littleport*, H. T. 6 Ann. 6 Mod. 97.—In the argument of this case, HOLT C. J. observed, that there ought to be a *monthly rate*, because possessors are to pay, and possessions frequently change.

The poor's rate ought to be assessed monthly.
S. C. Salk. 531.

92. *Overseers of Bishopsgate v. Beccher*, M. T. 7 G. 1. 8 Mod. 10.—The churchwardens of the parish of B. made a tax for the relief of their poor for a whole year, which amounted to 600*l.* and upward, when they should have made only a quarterly tax, and the same, through inadvertency, was confirmed by Alderman Beccher, who was alderman of that ward; and afterwards he, fearing that the churchwardens might collect the whole sum, and make some ill use of it, refused to grant a warrant to distrain for this tax: whereupon the churchwardens moved the Court of King's Bench for a *mandamus* to compel him to grant his warrant, and obtained a rule for him to show cause why a *mandamus* should not be granted. The alderman at another day showed all the

The poor's rate ought not to be made for a whole year.

(a) S. C. cited Vin. Abr. 425. where it is said, that an overseer may make as many rates as he will; and when allowed by two justices will be good.

matters before-mentioned for cause, &c.; and a rule was made, that he should grant his warrant to distrain for the tax for one quarter of a year, and no more; for he could not confirm this tax in part, it must be for the whole or for no part.

Poor's rate cannot be made for half a year.

93. *Stevens v. Evans*, E. T. 1 G.3. 2 Burr. 1152. — On 12th April, 1759, an assessment was made and allowed, at a vestry of the inhabitants of the parish of W., to reimburse S. D., the overseer, the monies laid out in the half year ending on *Easter Monday* then next ensuing the date, for the necessary relief of the poor of the said parish, which assessment was allowed by the justices. On a special case reserved for the opinion of the Court of King's Bench, it was *inter alia* objected, that this was a rate made for half a year, ending on *Easter Monday* next, whereas a rate cannot be made for longer than a month, 6 Mod. 97. 2 Salk. 531. — MR. JUSTICE WILMOT said, he believed, that whatever the law might be, the practice was, not to make their rates monthly.

Poor's rate need not be made monthly.

94. *Rex v. Overseers of St. George's, Middlesex*, E. T. 10 G.3. 2 Bl. Rep. 694. — Motion for a *mandamus* to make a monthly rate for the relief of the poor, the rates being now made quarterly. There had been an appeal to the quarter sessions against the quarterly rate, which was discharged with costs. — PER CURIAM: Discharge the rule.

A poor's rate made for six months prospectively is good. See S. C. post.

95. *Durrant v. Boys*, H. T. 36 G.3. 6 T. R. 580. — The case stated that it had been usual in *Sandhurst* to make two assessments in a year for the relief of the poor, viz. one soon after *Easter* and the other soon after *Michaelmas*, although in some years a third assessment had been made; that the rate in question was made on the 2d of *October*, 1794; and though it does not purport to have been for any particular time, was in truth intended by the overseers and understood by the justices to have been intended for six months prospectively. — LORD KENYON C. J. The principal objection that has now been made is, that the rate is bad, because it is a prospective rate; in order to prevent any mistakes that may hereafter arise in other cases from a supposition that this objection is well founded, it is necessary to declare that a prospective rate may unquestionably be good. Every person, who is conversant in matters of this kind, knows the impossibility of foreseeing and providing for every expence that may arise; and therefore a rate may be made prospectively; not indeed wantonly, but such as is adapted to the probable exigencies of the parish. But here I desire to enter my protest against deciding on the practice of making rates in this parish, as was suggested in the case of *Stevens v. Evans* (a); because this question arises on a statute made within time of legal memory; and in construing an act of parliament we cannot decide on the practice that may have obtained in any particular parish, for then there would be different constructions of this law in different parts of the kingdom. — GROSE J. The question here is, Whether the overseers exceeded their jurisdiction in making this rate? Nothing appears on the face of the rate to show us that they did; but the plaintiff had resorted to the usage of the parish to prove that this was intended to be a prospective rate. Even if it had appeared on the rate itself that it was made for six months, I do not think it would have been an excess of jurisdiction. The statute 43 Eliz. c.2 directs the overseers "to raise weekly, or otherwise, by taxation,"

(a) *Ante*, pl. 93.

&c. The legislature, seeing the necessity, in particular cases, of extending the rate beyond one week, added those general words "or otherwise," leaving it to those who make the rate to adapt it to the exigences of the parish. Some of the cases also show that a rate may be made for two or three months; and if for that time, why not for six months? If, indeed, a rate made for any time be injurious to a particular person on account of his leaving the parish before the expiration of that time, or on any other account, he should appeal against it to the Sessions, who will relieve him on his proving that he is aggrieved by it. — LAWRENCE J. was of the same opinion.

IV. In what Place the Property shall be rated.

See stat. 17 G. 2. c. 37.

96. *Kemp v. Spence*, H. T. 19 G. 3. 2 Bl. Rep. 1245. — Trespass for taking a distress for a poor's rate in the parish of R. The Duke of Dorset was owner of the soil of B. Park, consisting of two thousand and twenty acres, in the parish of R. Several other persons (among whom was the plaintiff) were entitled to a right of common in the park, as appurtenant to their lands in the parish of S. M. An inclosure was made by an act of parliament, whereby a certain specific share was given to the Duke of Dorset, and the residue divided into rateable allotments, to the several commoners; and the act declared, that thenceforth all right of common should be extinguished, and that the allotments should be held and enjoyed by the several owners in the same manner, and by the same tenure, as the respective lands, tenements, and hereditaments, in right of and for which the said allotments were so assigned, were then holden. — The plaintiff was nonsuited, and the question, on an argument for a new trial, was, Whether these lands so allotted were to be assessed to the poor's rate in the parish of Ringmer? — DE GREY C. J. delivered the opinion of THE COURT: The soil of the B. Park, out of which these allotments are taken, was, before the act of parliament, and still continues within the parish of R., and is occupied by the Duke of Dorset. As such, it was then assessable in R.; though, had a question arisen upon its value, allowance ought to have been made for the right of common annexed to the lands in S. M. Possibly the plaintiff's estate in S. M. was assessable so much the higher in respect of his common in R. Whether it was actually so assessed, does not at present appear. The common itself, quasi common, was certainly not rateable, not being the subject of occupation; but, if at all, it must be assessed as an accessory to the principal in S. M. If the right of common had been released by the landowners in M., the B. Park would have increased in value. It would have made no difference as to the place of assessment, whatever difference there might have been in the sum assessed. The act of parliament has done nothing more than the parties themselves might have done: it has extinguished the right of common, and thereby made the land more valuable; and then divided it between the duke and the commoners. Apply the statute 43 Eliz. c. 2. to the park before the act and after it, and it will make no difference, except in point of value. It is objected, that the act has declared that the allotments shall be holden in the same manner as the commons were; and therefore

On inclosure of a waste in the parish of A on which the landowners of B have a right of common appurtenant, the allotments given in lieu of that right shall be assessed to the poor of the parish of A See *Rex v. Cardington*, and *Rex v. Aire and Calder Navigation*, 2 T. R. 668. and post, § vii.

Co. Lit. 121.
Plow. 381.
Salk. 169.
Bunb. 138.
1 Vesey, 115.

Godb. 167.
4 Co. 13.
8 Co. 136.
2 Bulst. 354.

they shall now be considered as belonging to the parish of *M.*, at least in respect of taxation. But this is a construction too indefinite. The act has made essential alterations as to the manner of holding the allotted lands, compared with that of holding the right of common. They are changed from incorporeal to corporeal hereditaments; from accessaries to principals; from appurtenant to substantive rights; from inseparable to alienable property; from being held by prescriptive right to a modern parliamentary title; from having remedy by *quod permittat*, action on the case, and the like, to being protected by action of trespass and other corporeal remedies. The act means only that the allotments shall be of the same tenure, freehold, copyhold, or leasehold; and held for the same estate, inheritance, life, or years, as the commons for which they are given in exchange. It is also said to be an injury to a third parish, which cannot be intended to be the operation of any legislative act. But the fact is otherwise. The duke and the commoners might have done the same thing, without any interposition of the legislature. The alteration that has happened flows from the nature of property and the rights of the parties. All property is liable to variations in point of value, in maritime counties especially. So, in others, the value may be enhanced or lessened, annihilated or new created, by culture or neglect, by pulling down ancient buildings or by erecting new ones: Yet that is no injury to the parish, though the taxes thereby become heavier on the rest of the parishioners, and the hardship complained of is at least problematical. It may be doubted, whether *S. M.* will suffer more by losing a tax upon lands with which it has no concern, and in which it has no longer any interest, or *R.* by enhancing the rate of its assessments, at the same time that the land is now turned into severalty, which will employ more hands, and consequently breed more paupers: and THE COURT being of opinion that these lands were rateable in the parish of *R.*, the rule for a new trial was discharged.

Where by a navigation act the proprietor is entitled to a toll of 4s. per ton for goods carried from A to B or from B to A, and to a proportionable sum for any less distance; and is also enabled to appoint any place of collection; the tolls for goods carried the whole voyage from A to B are rateable in B though in fact they are

97. *Rex v. Page (a)*, *H. T.* 32 G. 3. 4 *T. R.* 543. — The defendant having been rated towards the relief of the poor of the parish of *N.* for the tolls of the navigation of the river *K.*, at 3*l.* 6*s.* 8*d.* after the rate of 20*d.* in the pound on the sum of 400*l.*, appealed to the Sessions, where the rate was confirmed, subject to the opinion of this Court on the following case: — By an act 1 G. 1. c. 24. for making the river *Kennet* navigable from *Reading* to *Newbury*, in the county of *Berks*, it is enacted, “that in consideration of
“the great charges and expences the undertakerrers would be at,
“not only in making the river navigable, but also in repairing, &c.
“the works, weirs, locks, &c. it shall be lawful for the undertakers, &c. from time to time, and at all times thereafter, to ask,
“demand, &c. for all and every such goods, &c. that should be
“carried or conveyed up or down the river *Kennet* between
“*Reading* and *Newbury*, the rates and duties thereafter mentioned, and that such place or places adjoining to the river as
“the undertakers, &c. should think fit, viz. for every ton weight
“of goods, &c. that should be carried or conveyed in any boat,
“barge, or vessel, up the river *Kennet* from *Reading* to *Newbury*,

(a) See *Rex v. Nicholson*, *post*, pl. 102. *Rex v. Mitton*, *post*, pl. 107. *Rex v. New River Company*, *post*, pl. 231.

"or down the river from *Newbury* to *Reading*, any sum not exceeding four shillings; and so proportionably for every greater or less weight, or for a less distance of place, to or from which any goods, &c. should be carried, &c.; and in case of refusal, neglect, or denial of payment on demand of the several rates, &c. the undertakers, &c. or such other persons as they should appoint respectively, should and might sue for the same by action of debt or upon the case in any court of record, or detain or make stay of any goods, or any vessel carrying such goods, for which the rates and prices ought to be paid, until they were satisfied," &c. By another act, 7 G. 1. after reciting that doubts had arisen since the passing of the former act, whether the undertakers were by the said act empowered to carry the navigation further than to the end of the borough of *Newbury*, they were empowered to make the river navigable from the wharf or common landing-place "in, at, or near *Reading*, to a place called the *Hospital*, in the borough of *Newbury*, under such authorities," &c. as were contained in the former act. By another act, 3 G. 2. the undertakers and proprietors were enabled to "seize, distrain, or detain any boats in case of non-payment of the tolls, and to cause the same, &c. so distrained to be appraised and sold." The length of the navigation from *Reading* to *Newbury* is eighteen miles and two furlongs; 142 yards of which are in the parish of *Newbury*, being the termination of the navigation. The navigation passes in its course through part of the respective parishes of *Newbury*, *Thatcham*, *Midgham*, *Brimpton*, *Woolhampton*, *Padworth*, *Aldermaston*, *Burghfield*, *Titchurst*, *St. Giles*, and *St. Mary's* in *Reading*. The net amount of the tolls, arising from the tonnage upon the whole navigation, is of the annual value of 1000*l.*; which arises as follows: viz. 400*l.* on the upward-bound goods carried up from *Reading* to *Newbury*, and landed or unladen in the parish of *Newbury*; 400*l.* on goods laden at and carried down from *Newbury* to *Reading*; and 200*l.* on goods that pass only part of this navigation, and which never come within the parish of *Newbury*. All the tolls in respect of this navigation are collected at *Aldermaston* lock, in the parish of *Padworth*, about the midway between *Newbury* and *Reading*, by the agent of *F. Page*, the appellant, and have been there collected ever since the 5th of *February* last. By the rate in question the appellant is rated to the whole amount of the tolls arising from the tonnage of goods carried on the navigation from *Reading* to *Newbury*, and landed at the basin in the parish of *Newbury*. — LORD KENYON C. J. This case does not admit of much doubt, whether it be considered on grounds of policy, on the words of this act of parliament, or on authorities. By the terms of this act of parliament, a toll of 4*s.* per ton is imposed on all goods carried up the river *Kennet* from *Reading* to *Newbury*; that toll of 4*s.* is one integral toll for that integral voyage. The case states, that many barges are navigated on this river; some of which perform the whole voyage up to *Newbury*, some the whole voyage down to *Reading*, and some intermediate voyages: and, in ascertaining this rate, the Sessions expressly state, that the rate is imposed on the appellant in respect only of the tolls which are received for goods carried up the whole navigation from *Reading* to *Newbury*. The cases which have been cited do not bear upon the present.

collected in a parish between A and B; because the tolls become due where the voyage is completed. See *R. v. Staffordshire Canal*, *post*, pl. 99.

In the *Hampton Wick* case, the rate was on a piece of ground adjoining the river which was used as a towing-path. There the court had no difficulty in saying that the occupier ought to be rated for it, because he was in the possession of land yielding an annual profit. In *Res v. Cardington*, it was stated, that the tolls became due for passing through every sluice: that therefore was a local toll, payable at the place where the sluice was erected. In the *Aire and Calder* case, no integral toll was imposed for the whole navigation, but a proportionable toll according to the distance which each vessel should go, at so much *per mile*: there it was sufficient to say that something was due at the extreme parishes, for which the undertakers were there rateable, without entering into the *quantum* of the rate. It was not necessary there to determine whether any thing were due in the intermediate parishes, because the tolls became due at so much *per mile*; it will be sufficient to decide that question whenever it arises. But arguments of policy and justice have been now urged; and it has been said, that the tolls should be considered to be due in each parish in respect of the quantity of land occupied by the navigation: but hard would be the lot of the officers who are to make the rates in these several parishes; they would have to measure not only the length but the breadth of the navigation in each respective parish, and to ascertain with precision the exact quantity of land covered with water: those difficulties would be insuperable; and it would be in vain to think of rating at all, if such were the rule. In the case of *Putney Bridge* (a), the toll was not apportioned in respect of the quantity of land over which the turnpike road led, but the toll was collected on the spot where it was held rateable. The ground on which my opinion proceeds, is, that where a person has a valuable interest in any parish or township, he ought to contribute towards the relief of the poor in that parish in proportion to such valuable interest. Here the appellant was rated in respect of those tolls only which became due at *Newbury*, the place where the navigation finishes, and where the goods were delivered. But it is said, that they were not in fact collected in *Newbury*, and that they became due where they were collected, the proprietor having power by the act of parliament of appointing the place of collection where he pleases; but certainly there is no justice in that; for the proprietor might appoint a place of collection not in any parish through which the navigation passes. What was said by my brother BULLER in the *Hampton Wick* case, that the tolls which became due in *Hampton Wick* could not have been rated in *London* if the corporation had chosen to receive them at *Guildhall*, is an answer to this part of the argument. And indeed it might as well be contended, that an estate is rateable where the steward thought proper to receive the rents. I am therefore clearly of opinion, that the justices in their Sessions have done right in confirming this rate, by which the appellant is assessed only for those tolls which became due at *Newbury* in respect of the integral voyage from *Reading* to that place: but I desire that this opinion may not be applied to other cases, where the undertakers of a navigation are entitled to so much *per mile* for intermediate voyages. — ASHURST J. It being stated in the case that the annual value of the tolls for the whole navigation is 1000*l.*, 400*l.* of which arise for the entire voyage ending at *Newbury*, I have ne

(a) Dougl. 305.

difficulty in saying that the latter tolls became due at *Newbury* the instant the goods are landed there. Though the proprietor on this navigation may, for his own convenience, appoint any place on the side of the river to collect the tolls, and though in fact they are collected out of the parish of *Newbury*, yet they become due at the place where the goods are landed. The case of *Rivers v. Page*, which was cited, I think must have proceeded on some other ground than that stated. I do not see how the owner of the navigation could distrain for the toll till it became due; and the toll did not become due till the voyage was completed. But here I think that the appellant should be rated for 400*l.* in *Newbury*, because tolls to that amount annually become due in that parish. — BULLER J. Two objections have been made against this rate; if either of them be well founded, the appellant must succeed. FIRST, That the tolls ought to be rated according to the proportion of the navigation in each parish; or, SECONDLY, that they should be rated at *Aldermaston*, where they are received, for which reason it has been argued that they become due there. But under the express words of this act of parliament the proprietor may appoint what place he chooses from time to time; and therefore it would be very inconvenient to fix that as the place in which they should be rated. The true question here is, as it was in the *Aire and Calder* navigation, Where did the tolls become due? At common law there could be no doubt about this question; for if the goods be not carried to the place of destination, the captain of the vessel is not entitled to any freight; for this reason, that he has not performed his contract; he must go to the port of delivery before he is entitled to any thing. If that be so at common law, it becomes necessary to inquire whether this act of parliament has made any difference in this case. The statute gives the proprietor of the navigation a toll of 4*s.* per ton for goods carried from *Reading* to *Newbury*; and gives him the power of collecting those tolls where he pleases. But that does not alter the contract between the owner of the goods and the proprietor of the navigation: and though, according to the case of *Rivers v. Page*, the tolls may be demanded before the voyage is performed, yet if the voyage be not afterwards completed, the owner of the goods may recover back the tolls in an action for money had and received. The clause in this act enabling the proprietor to collect the tolls in any place he chooses, was introduced for his benefit; but still the tolls must be demanded according to the rules of law respecting the carriage of goods from one place to another. This case falls directly within the principle of that of the *Aire and Calder*; where it was held, that the tolls ought to be rated in the parish where they become due; and that is the place of delivery. In the report of that case it is stated, that the undertakers were entitled to tolls, "according to the distance which such goods should be carried;" that is, the whole voyage: according to my recollection, the act of parliament in that case did not say that the undertakers should be entitled to so much for each mile; and though an act does mention the rate per mile, it is only used as the means of ascertaining what is due for the whole voyage; for the toll cannot be due till the voyage be completed. — GROSE J. The short question is, Whether this property be liable to be rated in *Newbury*? which

depends on this, At what place are these tolls to be considered as property? Most clearly at the place where they become due; and I think they become due where the voyage is finished, for till then the carrier could not recover any thing at common law. But it has been said, that a case was decided in the Common Pleas, in which it was held that a distress might be taken for tolls before the voyage is perfected: if such were that case, it must have been decided on the special provision in this act, which enables the proprietor of this navigation to collect the tolls where he pleases. But that clause did not mean to say that the tolls did not become due in law at the place where the voyage was completed, and where the goods were landed and delivered. The observation of my brother *Buller* is decisive on this head, that even after a distress the owner of the goods might recover back the tolls, if the voyage were not afterwards performed, and the goods delivered according to the contract. Then it was argued, that the appellant should be rated for these tolls at *Aldermaston*, where they are collected; but if we should so determine this case, we should open a door to fraud; for then the proprietor would fix the place of collection in some parish where the poor-rates are the lightest, which could not be within the meaning of the act.—Order of Sessions affirmed.

Ships are rateable to the poor in the parish to which they belong.

98. *Rex v. White*, T. T. 32 G. 3. 4 T. R. 771.—This was an appeal against a poor-rate for the town and county of *P.*, in which there is a custom to rate personal property. The defendant was rated in the usual proportion, on the sum of 13,500*l.* for his personal property, which consisted of certain ships or vessels employed in carrying on the *Newfoundland* trade from the port of *P.* in the parish of *St. James's*. It was contended in a case sent to the Court of King's Bench, that where property is moveable in its nature, it cannot be determined to be property in one parish rather than in another, and that ships from their nature could not be said to be locally situated in the parish. But the Court was, on this point of the case, unanimously of opinion, that these ships were rateable to the relief of the poor in the parish of *St. James*, for that the port of *P.*, which was stated to be therein, was their home, and must be so considered for the purposes of the register act, 26 G. 3. c. 60.

A navigation act empowered the proprietors to take so much per mile per ton for all goods carried along the canal: Held that they were rateable to the poor for the tolls in the different parishes where the tolls became due, that is where the respective voyages finished;

99. *Rex v. Staffordshire Canal (a)*, M. T. 40 G. 3. 8 T. R. 340.—The defendants appealed to the Sessions against a rate made in *December* last for the relief of the poor of the chapelry or hamlet of *Lower Mitton* in the parish of *Kidderminster* in the county of *Worcester*, whereby they were rated for "their basons, towing-
"paths, and that part of their canal and the locks lying within
"Lower Mitton, and for the tolls and duties arising therefrom due
"at Lower Mitton on 1500*l.* at the sum of 75*l.*; for their lands,
"wharfs, cranes, weighing-machines, and timber-yards in their
"own possession on 12*l.* at the sum of 12*s.*; and for part of
"Jones's land also in their own possession on 2*l.* 10*s.* at the sum
"of 2*s.* 6*d.*" On hearing the appeal the Sessions confirmed the rate on the company for their lands, wharfs, cranes, weighing-machines, and timber-yards in their own possession on 12*l.* at 12*s.*, and for part of Jones's land also in their possession on 2*l.* 10*s.* at

(a) See *Rex v. Nicholson*, *post*, pl. 102.

2s. 6d. without opposition. The court also confirmed the rate on the company for their basons, towing-paths; and that part of their canal, and the locks lying within *Lower Milton*, and for the tolls and duties arising therefrom, due at *Lower Milton* on 1500*l.* at 75*l.* in manner following, viz. they confirmed the rate of 75*l.* upon the said 1500*l.*, so far as respects 350*l.* (part of the sum of 10,000*l.* after mentioned) payable for and in respect of the lock-duties on passing through the locks lying within *Lower Milton* hereinafter described, without opposition; and they also confirmed the rate of 75*l.* upon the said 1500*l.*, so far as respects the residue of the said 10,000*l.* after mentioned, payable for and in respect of the tolls and duties due at *Lower Milton*, hereinafter also described, subject to the opinion of this Court, as to this last charge, on the following case. The rate was duly allowed and published. By an act of the 6th of G. 3. the company are empowered to take rates and duties for tonnage and wharfage for all goods conveyed on the canal not exceeding 1½*d.* per mile for every ton, and so in proportion for any greater or less quantity than a ton; which rates and duties are directed by the act to be paid to such persons, at such places near the canal, in such manner and under such regulations as the company shall appoint; with a power of distress in case of non-payment. It is further enacted, that for the more easy collecting of the rates and duties, the master, &c. of every vessel navigating on the canal shall give a just account in writing, signed by him, to the collectors of the tonnage or duties, at the places where they attend for that purpose, of the quantities of goods in such vessel, from whence brought, and where they intend to land the same; and if such goods be liable to pay different tolls, then such master, &c. shall specify the quantities liable to the payment of each toll; and in case they neglect or refuse to give such account, or give a false account, or deliver any part of their loading at any other place than is mentioned in that account, they are to forfeit to the company 10*s.* for every ton of goods so falsely accounted for, &c. over and above the respective rates and duties payable for the same, and recoverable in the same manner, &c. By another act of 10 G. 3. the company are authorised to take tonnage proportionably for any less distance than a mile, which any commodities shall be conveyed on the canal, to be collected, recovered, and applied as the former tonnage rates; and the vessels, &c. passing through the two locks erected between the river *Severn* and the canal basin, are to pay a toll or lock due at the rate of 1*d.* per ton, in lieu of the tonnage of 1½*d.* per mile fixed by the said recited act; and the said tolls or lock dues are to be collected, recovered, and applied as before directed, &c. By the same act of the 10 G. 3. it is enacted, that the shares of the company, which by the former act the proprietors held in the nature of real estates, shall be deemed personal estates, &c. The lock dues received by the company in the last year for boats and other vessels passing through the said two locks, which locks are locally situated in the hamlet of *Lower Milton*, amounted to 350*l.* The tonnage of the goods brought in boats down the canal and landed at *Stourport*, which is in the hamlet of *Lower Milton*, and the termination of the canal, or transhipped therefrom on board canal boats to *Severn* barges, amounted in the year 1798 to 9650*l.*, making together with the

though for their own convenience they were authorised to collect the tolls where they pleased, and did in fact collect them in other parishes.

said 350*l.* the sum of 10,000*l.*, which sum of 9650*l.* arose in the following manner; viz. [Here the case set forth the different sums received for the tonnage of goods taken in at different places on the canal, showing how much the tonnage amounted to in each parish, reckoning by the number of miles that the canal passed in the several parishes; according to which mode of calculation, by the mile, a very small part of the toll arose in *Lower Mitton*.] But the said sum of 9650*l.* was not received by the company at *Lower Mitton*, but at the several places where the goods were shipped. The expences of repairing the bason and that part of the canal which lies within the hamlet amount annually to 540*l.* Other parts of the canal and basons lying out of the hamlet are also repaired at a great annual expence; and the repair of every part contributes to the profits and use of the whole canal. The dividends *per share* of each proprietor of the canal for the year 1798 amounted to 32*l.* clear of all expences and deductions. The agents of the company on receiving accounts in writing of the quantities of goods which are in each vessel, and of the places where the same are intended to be landed, in the manner required by the first act, deliver permits to the master, &c. of every such vessel, &c. to navigate the same accordingly upon the canal. The company are not carriers upon the canal, nor the owners of any of the vessels employed thereon; and the payment of the tolls on goods carried on the canal is by the direction of the company made to their agents at the places where such goods are laden or shipped; and the company consider such places as the places at which they become due under the act. The land used in the canal, the towing-paths, and basons lying in the hamlet of *Lower Mitton*, measure 8*a.* 2*r.* 13*p.*; and the land used in the whole of the canal towing-paths and basons measure 370*a.* 2*r.* 7½*p.* The length of the whole canal is 46 miles and a half, amounting to 81,840 yards; 1367 yards of which, including the length of the bason, and measuring to the *Severn* lock, being the termination of the canal, lie in the hamlet of *Lower Mitton*; so that that part of the canal which lies within the hamlet bears to the whole length of the canal the proportion of about one to sixty. — LORD KENTON C. J. I consider that this case is brought forward to give us an opportunity of reviewing the opinions we delivered in the former cases that have been alluded to: but on reconsideration, I do not see any reason to induce me to change the opinion I then gave. In the first of those, *R. v. The Undertakers of the Aire and Calder Navigation*, which was decided soon after I came into this Court, though it differs from the present case, some rules were established applicable to this case. But I cannot distinguish the other case, *R. v. Page* (a), from the present in principle and in substance, though there are some nice distinctions between them. And if the rules there laid down had occasioned any great inconvenience, the parties interested have had in the interval of several years many opportunities to apply to the legislature for a remedy: but no application of that kind having been made, I presume that no inconvenience has resulted from those determinations. This does not appear to be a contest between the parishes through which the canal passes and the company of proprietors, but the company are struggling against the rate altogether. To this company indeed, as well as to others of the same kind, the public are much

(a) *Ante*, pl. 97.

indebted for their undertakings : but they ought to contribute to the relief of the poor, in common with the owners of all other species of property, in proportion to the profits that they acquire. As the company have objected to the present mode of rating, I am anxious to know what other mode they would substitute for it : on this point, however, their counsel have left me in great doubt. They give me the choice of two modes ; they wish the company either to be rated for the whole in the parish where the tolls are received, or for the different parts in the different parishes through which the canal passes, in proportion to the number of miles in each parish : but they have not named that mode on which they choose to rely. I rather think that they would not be satisfied with the first of those methods ; because, after receiving the tolls in one parish for the whole voyage, it is too much to say that the company should retain them in the event of the owners of vessels not being able to go the whole voyage, either on account of the locks being out of repair, the banks giving way, or any other accident of that kind. It is not therefore the most convenient place to rate the tolls where they are collected. Then it is said that the other mode of rating should be adopted, because the land over which the canal passes was before rateable to the poor, in respect of its produce. But insuperable difficulties occur to this mode. It is admitted that all property should be rated to the poor according to its meliorated state : but on account of the difference of expence attending the cutting of a canal in flat and hilly countries, it is almost impossible to ascertain the precise degree in which the property is meliorated in each particular parish. The bar are already in possession of the reasons which we gave in the case of *R. v. Page*, and therefore it is not necessary to repeat them. It seems to me, after reviewing the whole of the subject, and considering which is the most eligible mode of rating the property in question, that the mode adopted below is that which approaches nearest to justice. It is sufficient therefore to say, that I continue to think that the case of *R. v. Page* was rightly decided, and as I cannot distinguish this case from that in principle, the present rate must be confirmed. — GROSS J. The great object in this case is to find out the true principle according to which the tolls ought to be rated. This very point was much considered in the case *R. v. Page*, where, after the best consideration that I could give to the subject, it appeared to me that tolls of this kind should be rated where they become due : and I cannot on reconsideration discover any other mode of rating less exceptionable than that. That mode may possibly be liable to some objection, and so is every other mode that has been suggested : but that mode appears to be most consistent with the justice of the case, and to be attended with fewer difficulties and objections than any other, and it is not inconsistent with any clause in the act of parliament by which the tolls are imposed. The Lord Chief Justice has stated his objections to both the modes of rating proposed by the company ; and I entirely agree with his Lordship on those points. In answer to one argument at the bar, that the money was not paid for the tonnage, but for the permit to pass on the navigation, it is sufficient to refer to the act of parliament, which empowers the company to take for tonnage for all goods

conveyed on the canal such rates and duties, &c. not exceeding 1*½*d. *per* mile for every ton : the rates therefore are not payable until the goods are conveyed, for until they are conveyed, it is impossible to say how much will become due. For though the money may be paid in advance for the convenience of the company, in many instances it must be returned if the voyage cannot be completed, because until the voyage is completed no money becomes due under the act of parliament. On the whole, therefore, I think that the mode of rating adopted in the case of *R. v. Page*, which seems less objectionable than any other, ought to be adopted in the present case. — LAWRENCE J. The company, who object to the present mode of rating, say that they should be rated for the tolls either in the parish where they are collected, or in the several parishes through which the canal passes, according to the distance in each. Their counsel would not absolutely choose the first; they seemed rather to prefer the latter mode. But considering that this is a *rate on tolls*, the proprietors of the tolls must be rated either in the parish where the tolls become due, or in that where they are received : but I think they cannot be rated in the parish where they are actually collected, because many cases may be put in which the tolls, though received, must be returned to the owners of the goods. Therefore it seems to me that the tolls should be rated in the parish where they become due, that is, where the voyage is complete; and what was said by Mr. J. Buller in giving his opinion in *R. v. Page*, comparing this to the case of a carrier, deserves great weight. But it has been argued that this resembles the case of *R. v. Cardington*, where the tolls became due on passing the sluice : but it must be remembered that there the toll was paid for the use of the lock; and if the owner of the vessel, after paying the toll, had been prevented pursuing his voyage, he could never have recovered back his money because he had had the use of the lock. Nor is this like the case of a turnpike; for there the tolls are paid for the benefit of the public, and not for the use of any individuals, and those tolls are not the subject of taxation within the statute of 43 *Eliz.*; there also the money is paid for the privilege of passing through the gate, and the party having once paid it cannot under any circumstances recover it back again. It seems to me, therefore, that this question was very rightly settled in *R. v. Page*, which case cannot fairly be distinguished from the present. — LE BLANC J. This is a rate on tolls, and not on land. It is admitted that tolls, as such, are rateable property, and that such property is rateable in the parish where it arises; now it was decided in *R. v. Cardington*, and in other cases, that by this expression, where it arises, we are not to understand the parish where the tolls are actually received, but, the parish where they become due. The question then in this case is, Where do these tolls become due or payable? It has been said that the tolls are not paid to the company in respect of a contract for the carriage of goods, but for the privilege or liberty of carrying goods on their navigation : but, in each instance, it is an entire contract to pay so much for the liberty of carrying goods for a certain space along the canal, and until the contract on the part of the company, giving the privilege of carrying the goods on their navigation, is performed, nothing becomes due to them. If the contract

be for the liberty of sending goods the whole length of the navigation, the contract is not performed on their part, and nothing becomes due to them for tolls until the goods are conveyed to *Stourport*: if the contract be for the privilege of conveying goods an intermediate voyage, to some place short of the whole distance, the tolls do not become due until such shorter voyage is performed. But this very question has been already determined in the case so frequently alluded to, *R. v. Page*; and unless the Court felt that there were some strong objections to the mode of rating adopted in that case, that decision ought to govern the present case. Now no mode of rating these tolls more consistent with justice or with policy than the rule there adopted has been pointed out. The counsel for this company have indeed contended that this case is distinguishable from that in this respect, that there the toll was limited at a gross sum, 4s. per ton, for the whole voyage, and so proportionably for a greater or less distance, whereas here the toll is 1½d. per ton per mile: but there is not in reason any distinction between the two cases on that account; in the one case as well as in the other the rate of tonnage is calculated at so much per mile. Not being able, therefore, to distinguish that case from the present, nor seeing any ground on which I can say that that decision is not consistent with the rules of law or public policy, I am of opinion that the order of Sessions must be confirmed. — PER CURIAM: Order of Sessions confirmed.

100. *Rex v. Leeds Canal*, T. T. 44 G. 3. 5 East, 325. — The defendants appealed to the Sessions against a rate made in December last for the relief of the poor of the township of *Habergham Eaves* in that county, whereby they were rated for a warehouse and land occupied with it 9s. 6d. and for the rates, tolls, and duties arising from the navigation to the said company within the said township of *Habergham Eaves*, 40s., being a rate made upon the sum of 1352l. 12s. 4d. On hearing the appeal the Sessions confirmed the rate, subject to the opinion of this Court as to the last charge, to which the appellants confined their objections, on a case, stating in substance, That the rate was duly allowed and published. That by stat. 10 Geo. 3. the incorporated company of proprietors of the canal navigation from *Leeds* to *Liverpool* were enabled to make a navigable canal from *Leeds* to *Liverpool*, and to take a certain sum per mile for the tonnage and wharfrage of goods navigated thereon, and so in proportion for any greater or less quantity than a ton; which rates were to be paid to such persons at such places near the canal, in such manner, and under such regulations, as the company should appoint. It was also enacted, "that the said tolls, rates, and duties should at all times thereafter be exempt from the payment of any taxes, rates, assessments, or impositions whatsoever, any law or statute to the contrary notwithstanding, other than such taxes, rates, and assessments as the land which should be used for the purpose of the said navigation would have been subject to if this act had not been made." By another act of the 23 Geo. 3. incorporating the said canal navigation with the river *Douglas* navigation, which had been made navigable under the authority of an act passed in the 6 Geo. 1., and then purchased of the proprietors of the said river navigation by the *Leeds* and *Liverpool* Canal Company, it is enacted, "that the several navigations, cuts, or canals,

Where goods are carried along two different lines of canal, one of which is by statute exempted from being rated in respect of the tolls, and the other not; though the voyage happen to finish on the unexempted line where the tolls become due and are received, yet the canal company shall not be rated for more than such proportion of the tolls as accrued in respect of the carriage along the unexempted line. And the toll arising in respect of so much per ton per mile is to be rated only for so many miles as the goods were carried

along the unexempted line. And where the act directs that the tolls should be exempt from any taxes, rates &c. other than such as the land which should be used for the purpose of the navigation would have been subject to if the act had not been made; that goes to exempt the tolls *quæ tolls* altogether from being rated in respect of the line so exempted, leaving the land rateable as before.

“ and every part thereof, and the said tolls, rates, and duties to be taken upon the same, or any part thereof, under the authority of this or either of the aforesaid acts, should at all times be exempt from the payment of any taxes, rates, assessments, or impositions whatsoever, other than and except such taxes, rates, and assessments as the land which had been or should be used for the purposes of such navigations, cuts, or canals were or would have been subject to if this act had not been made: and that such navigations, cuts, or canals, should not be subject or liable to the payment of any taxes, rates, and assessments, save and except such taxes, rates, and assessments as had been and then were usually charged and assessed thereon, any law or statute to the contrary notwithstanding. But nothing in this clause to exempt any quay, wharf, warehouse, or other house, from the payment of any taxes, rates, or assessments. And it is enacted, that the clause in the said act 10 Geo. 3. exempting the tolls, rates, and duties arising from the said canal from assessments should be repealed.” The said canal navigation was completed under these acts and another act of the 30 G. 3. from *Leeds* to *Wanless Banks*, a distance of 47 miles 6 furlongs: when it being found desirable to make a deviation in the then parliamentary line, by another act of the 34 G. 3. the company were empowered to make a deviation, and cut from the former line from *Wanless Banks* through several townships therein mentioned, and amongst others *Habergham Eaves*, to communicate with the *Douglas* navigation at *Wigan*, and the company were authorised to take for tonnage and wharfrage of goods, &c. navigated thereon, a certain sum per mile, and so in proportion for a greater or less quantity than a ton; to be paid to such persons, at such places, &c. (as before) as the company should direct. And that every fraction of a mile should, in ascertaining the rates, be deemed a whole mile. And it incorporates all clauses, powers, authorities, provisoes, exemptions, &c. contained in the act of the 10 G. 3., not repealed by the acts of the 23 G. 3. and 30 G. 3. or by this act; and also incorporates all clauses, &c. in the act of 23 G. 3. relating to the *Leeds* and *Liverpool* canal, not repealed by the act of the 30 G. 3. or by this act; and also all clauses, exemptions, &c. in the act of the 30 G. 3. relating to the *Leeds* and *Liverpool* canal, not repealed by this act, except so much of the said acts as enables the said company to deviate the line of the said canal from *Leeds* to *Liverpool*, and to exempt the tolls, rates, and duties therefrom arising from the payment of any taxes, rates, assessments, or impositions whatsoever, &c. Under the powers of the stat. 34 G. 3. so much of the said canal navigation has been completed in the varied line of deviation, as extends from *Wanless Banks* aforesaid through a number of townships (and amongst others *Habergham Eaves*) to a place called *Hensfield Common*, in the township of *Clayton le Moors*, being a distance of 14 miles and 7 furlongs. In the township of *Habergham Eaves* the company have erected a warehouse, where goods from all parts of the canal are landed, having passed as well upon the canal made under the authority of the 10 G. 3. 23 G. 3. and 30 G. 3. as the deviation made under the authority of the stat. 34 G. 3.; and the tonnage of such goods so landed there amounted, from the 1st. of *January* to the 31st. of *December*, 1803, to 1352*l.* 12*s.* 4*d.*, of which 240*l.* 17*s.* 4*d.* is the proportion arising from the navigation of that part of the

new line of canal made by virtue of the act of the 34 G. 3. That part of the canal which lies in *Habergham Eaves* has cost in making and completing 46,548*l.* 19*s.*; and the average annual expenditure of the company for repairs, damages, taxes, wages, and expences relating to that part of the canal made by virtue of the stat. 34 G. 3. and the part communicating therewith at *Wanless Banks*, made under the authority of the said acts of the 10 G. 3. 23 G. 3. and 30 G. 3., and the proportion of the average annual expenditure of the company for the committees, salaries, and expences of the concern at large, belonging to the above-mentioned parts of the canal, amounting to 362*l.*: but no deduction was made in respect of such last-mentioned sum from the amount of the tolls, rates, and duties upon which the rate was made. Notes or bills of lading are delivered by the masters, &c. at various places upon the line of the canal appointed by the company, one of which is *Habergham Eaves*; and such notes are transmitted by the warehouse-keeper there to the chief office of the company in *Bradford*, where a particular of each person's tonnage and rates is made out, and which is afterwards collected by the company's agents from such persons, at their places of abode, wherever they may be, or is paid at the chief office of the company at *Bradford*; but no part of the canal passes through the township of *Bradford*. The company are not carriers upon the canal, nor the owners of any vessels employed thereon. The Sessions being of opinion that the appellants were rateable for the relief of the poor of *Habergham Eaves*, for all the tolls arising upon goods discharged within *Habergham Eaves*, although carried as well upon the canal made by virtue of the acts of the 10 G. 3. 23 G. 3. and 30 G. 3. in the original line, as upon the deviation made under the authority of the stat. 34 G. 3., and that, without making any deduction from the amount thereof in respect of the sum of 362*l.* for repairs, wages, and other outgoings, confirmed the rate. — LORD ELLENBOROUGH C. J. I agree with the principle of those cases, that the toll is only due, and can only be taxable, if at all, at the place where the voyage ends, for which the goods were contracted to be carried, and that it is not to be portioned out amongst the several parishes through which the goods may intermediately pass: but where the legislature have expressly exempted a particular line of navigation from being rateable in respect of the tolls, along which line the goods have been carried in respect of which in part the toll is calculated, there is nothing which should prevent us from giving effect to this exemption, by saying, that where the toll is received, it may be taxed for that proportion of it accruing along the line which is taxable, but that it shall not be taxed for that proportion which accrued along the line which is exempted. Now here a rate has been made taxing the tolls altogether, without distinguishing between the different parts which are exempted or not exempted: that cannot be supported. We cannot apportion it; those who make the rate should apportion it. The rate, as it is, cannot be supported. The word *exempt* may be taken to mean *precluded from being chargeable*. The meaning of the clause of exemption was, that the land or space occupied by the canal should be liable to be taxed as it was before; that is as *the land* was before: but the *tolls* were not rated before, for they had no existence; and therefore are exempted. — GROSE J. In order to tell whether the tolls are rateable or not, it must be seen from whence they arose.

One line of the navigation is exempted from being rated in respect of its tolls, and another not. Then such proportion of the tolls as have accrued along the exempted line is not liable to be rated, let it be due or received where it will; otherwise the exemption which the legislature have holden out to the company would be a mere trick and may become nugatory. — LAWRENCE J. As to the exemption itself, the object of the clause was to take care that when the company were engaging in a hazardous undertaking, which was considered to be beneficial to the public, they should not be liable to any other taxes than those which the land they made use of in their undertaking was before liable to. Now the land was not before liable to be rated for toll; and therefore the proprietors shall not be liable now to a rate on tolls in respect of it when converted into a canal. But this does not go to exempt the land from paying what it did before. Upon the other point I fully accede to what has been said. The toll must be apportioned *pro rata itineris* for so much of it as accrued on the unexempted line, and that proportion only is liable to be rated where it becomes due. — LE BLANC J. I am of the same opinion. We cannot adopt any other construction without totally defeating the object of the legislature in giving the exemption. And this may be done without difficulty. The land will be rated in the same manner as it was before the act. The tolls will be rated where they become due; but in calculating the quantum of toll, which is the subject of the rate, allowance must be made for so much of the toll as accrued in respect of the line exempted. For instance, if two thirds of the line are exempted, then tolls which have come along the whole line to *Habergham Eaves*, will only be liable to be rated in the proportion of one third. So if the goods have been carried 15 miles, five miles of which are not exempt, they must be rated only for those five miles; and so in proportion. It will be easy therefore in all cases to calculate the proportion of tolls which are rateable, according to the number of miles which the goods have been carried along the exempted and unexempted lines of the canal. — Rate on the tolls quashed.

Commissioners under the *Beverley and Barmston* drainage act, who purchased land and erected buildings in the parish of *Sculcoates*, for the outlet of the drainage, but who received no benefit from such property in *Sculcoates*, but the whole benefit was derived to the owners of lands in other parishes, drained by means of

101. *Rex v. Sculcoates*, H. T. 50 G. 3. 12 East, 40. — The parish officers of S., in a poor rate, charged the commissioners of the *Beverley and Barmston* drainage in a certain sum, in respect of certain lands and buildings in that parish, purchased by them and converted into a drain, under the act of parliament after-mentioned, which land was cut for the purpose of drainage, and is now covered with water, containing six acres. The commissioners appealed to the Sessions against the rate, on the grounds, first, that they were not the proprietors of any rateable property within the parish of S.; and secondly, that they derived no beneficial interest from the lands for which they were rated; and the Sessions quashed the rate, subject, &c. By an act of the 38 G. 3. c. 63. intituled, "An act for draining, preserving, and improving, the low grounds and carrs, lying in the several parishes, &c. of *Beverley*, &c. (naming nearly forty districts, amongst which S. is not one), all in the East Riding of the county of York," certain commissioners are appointed for putting the act into execution. These commissioners, for the purposes of the act, purchased the lands and buildings then rated in S., which lands and buildings have been converted, by virtue of the act, into part of a

drain extending from *Beverley* through part of *S.*, a distance of ten miles; but no part of the lands adjoining thereto are benefited thereby; the drain having been made for the passage of waters coming from certain low grounds, intended by the act to be drained into an outfall clough into the river *Hull*. The lands and buildings so purchased by the commissioners, to be applied as aforesaid, were, previous to such purchase, assessed to the relief of the poor and other parochial rates and assessments in common with other lands in *S.*, but since the making of the drain the lands so cut or excavated have not been rated. The drainage is in every respect completed, and the proprietors of the low grounds, situate within the several parishes mentioned in the act, have received the benefit thereof. — *Park* contended that the commissioners, having a mere naked trust, without any beneficial interest, were not rateable in respect of this property, and cited the case of the *Salter's Load Sluice Navigation*. (a) — The other side insisted that the commissioners were rateable, inasmuch as they were in the actual occupation of the property, and relied on *Rex v. Gardiner*. (b) *The Corporation of Aberavon*. (c) *The Dock Company of Hull*. (d) — *ELLENBOROUGH C. J.* In these cases the property rated yielded pecuniary benefit, or, that which was capable of being estimated and converted into pecuniary benefit within the parish, to the parties interested; but here the benefit results to the lands drained which lie in other parishes, where the owners are liable to be rated in proportion to their improved value; and the property would be liable to a double rate if it were also rateable in the hands of the commissioners. Or supposing that the objection of double taxation were obviated by the argument, that the amount of the rate on these commissioners should be deducted, *pro tanto*, from the several parochial assessments on the increased value of the lands in the hands of the owners, still the difficulty remains of showing, that there is any benefit received by these commissioners for themselves or others within this parish, which is capable of being rated. The benefit is all derived in other parishes. The dock company of *Hull* were in the receipt of tolls for the benefit of the share-holders, in respect of the use of the docks within the parish in which they were rated; but these commissioners gather no profits, either for themselves or others in this parish, but are the mere instruments of benefit to land-owners elsewhere. I know of no instance where a canal company has been held rateable for the mere space occupied by the canal in a particular parish, if no tolls were received or became due there; and I cannot distinguish between land converted into a drainage and into a canal: we have no doubt upon the case; and are clearly of opinion, that the commissioners, having no beneficial occupation of the property in this parish, either for themselves or others, are not liable to be rated for it. If we were to hold otherwise; it would be opening a question of beneficial occupation in every case where a canal or turnpike road passes through the parish, though the tolls were not due there; which has never been considered as liable to be rated in such parishes, but only where the benefit accrues. In conformity, therefore, with all the decisions on the subject, the commissioners, having no beneficial occupation within the parish, are not liable to be rated there. — Order of Sessions confirmed.

such outlet, are not rateable in *Sculcoates* for such benefit.

(a) *Post*, pl. 198.

(b) *Post*, pl. 167.

(c) *Post*, pl. 214.

(d) *Post*, pl. 184.

The lessee and occupier of an ancient and exclusive ferry not being an inhabitant resident within the township in which one of the termini of the ferry is situated, is not liable to be rated there, for any share of the tolls of such ferry: for supposing a ferry to be real property, it is not such real property as is mentioned in the stat. 43 Eliz. c. 2. the occupancy of which subjects the party to the relief of the poor of the place. And all the cases where parties have been held rateable in respect of the occupancy or receipt of tolls (apart from the question of inhabitancy) have been where they at the same time occupied real visible property connected with such tolls in the place where they were rated.

102. *Rex v. Nicholson, E. T. 50 G. 3. 12 East, 330.* — *Nicholson* appealed against a poor-rate for *M.*, whereby, as lessee of an ancient ferry, from and between *S.* near the sea, and *M.*, he was rated for the tolls of the same. The Sessions confirmed the rate, subject, &c. The appellant is an inhabitant of and lives in *S.*, which town lies close to the sea, at the mouth of the river *Wear*, which divides the parish of *S.* from the township of *M.*, maintaining each their own poor. There is an ancient ferry for horses, &c. which crosses the river from *S.* to *M.*, and from *M.* to *S.* This ferry, until 1795, was leased by the *Ettricke* family under the Bishop of *Durham*, when it was purchased by, and now belongs to the commissioners of *Wearmouth Bridge*; and the ferry and the tolls thereof are at present let by them on a lease for three years from *Martinmas* 1808 to the appellant, at the yearly rent of 350*l.* There are two large boats, which keep plying all day to and from *S.* and *M.*, and which are rowed by two in each boat, and the fare or toll paid for a person passing in the ferry is a halfpenny each way; and of late years for convenience it has been accustomed to collect the money of the passengers as they enter the boat on either side of the river, instead of when they go out, as it used to be done formerly; and one boat puts off from one side of the water when they see the other put off from the opposite side. There is a small boat also goes to and from *S.* and *M.* during the night; and the inhabitants of *M.*, who are customed as after-mentioned, pay the same toll or fare of a halfpenny as persons not customed do, if they go over in this night-boat. The respective boats when not used have always been locked up on the *S.* side of the water, close to the place where the passengers get in on that side. Previous to the year 1710, a dispute having arisen between *A. Ettricke, Esq.* the then lessee, under the bishop, of this ferry, and *Sir W. W. Bart.* respecting the ferry landings on his estate in *M.*, and the ferry dues to be paid by his tenants in *M.* for passing the ferry, it was referred to arbitration: and by an award dated 25th of *March* 1710, two places were set out by the arbitrators for the ferry-landings in *M.*; and the one of them, which is called the high-landing in the award, is the place where the ferry now lands, and has for a great many years past. And the ferry dues to be paid by his lessees and tenants in *M.*, were also fixed by the arbitrators; namely a cottage 2*s.* 6*d.* and a dwelling-house 5*s.* for one year's passage of the lessees, tenants, or inhabitants of each cottage or house; and the ferry was to land from thenceforth in no other place in *M.* but the two places set out by the arbitrators. The ferry dues settled and ascertained by that award for the passage in the ferry-boats of the lessees, tenants, and the inhabitants of the cottages and dwelling-houses situated in *M.*, have been paid ever since to the tenant or occupier of the ferry for the time, and are reserved and confirmed to the same lessees, tenants, and inhabitants, in the act passed for the erection of *Wearmouth Bridge* in 1792, and amount to from 80*l.* to 100*l.* a year. The ferry has always until the year 1802, when it was let to one *T. W.* who lived in *M.*, been let to persons living in *S.*, and been rated to the poor of *S.* for the whole of the tolls or ferry dues: and it has at different times been also rated to the poor of *M.*; but nothing was ever paid unto that township until *W.* took the ferry; when the parish of *S.* having raised his rate, in consequence of his having given an

additional rent, he objected to pay, on the ground that part of the tolls of the ferry arose and became due in *M.*, and were liable to be rated to that township; and *M.* having rated him for a part, he appealed against the *S.* rate, on the ground before mentioned, to the sessions at *Durham* in *July* 1805, when the point was abandoned by the respondents, and *W.*'s rate to *S.* was amended, and reduced to half of the tolls of the ferry; and the ferry has since been continued to be rated to *M.* for one half of the tolls or ferry dues, including one half of the custom money, and for the other half thereof, including the remaining half of the custom money, to *S.* The number of passengers from *S.* to *M.* are about the same as from *M.* to *S.* The place where the ferry lands in *M.* is of little or no value of itself, in case it was not used for the ferry landing. No question arose in this case as to the quantum, for it was admitted that the appellant was properly rated in *M.* as to quantum, in case he is rateable there at all for any part of the tolls or fees arising or received from or in respect of the ferry boats. — *ELLENBOROUGH* C. J. The rate is here imposed on the tolls merely of the ferry: and the question is, whether the proprietor of the ferry, who is not an inhabitant of the township in which he is rated, be liable to be rated for such tolls received by him there? And this being a question upon the construction of the stat. 43 *Eliz. c. 2.*, it is material to look to the words of it. By that statute the parish officers, by consent of two justices of peace, are directed to raise a competent sum for the relief of the poor by taxation of "every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods in the said parish." Now tolls do not come within any one specification of occupancy described by the statute: they are not lands or houses, &c. If, therefore, the owners be taxable for them at all, it must be as an inhabitant of the parish out of which they arise: but there is no case in which the word *inhabitant*, in that statute, has been held to mean any other than a resident within the parish. In the cases which have occurred in respect of personal property, such as *The King v. Liverpool*, and *The King v. Collinson*, which are mentioned in *The King v. Jones* (a), residence was considered necessary to constitute inhabitancy. But we are reminded of cases where tolls, arising from navigable canals, to which the tolls of a ferry are assimilated, have been held rateable, without any reference to the question of inhabitancy; and the *Wickham* case (b) is much relied on, where a corporation was held rateable for market tolls; but they were the lords of the soil where the market was held, in respect of which they were rated for the tolls. In the case of *The King v. Cardington* (c), the rate was specifically upon the sluices, on that which was local and visible property, and producing profit within the parish; and all the cases where the tolls have been held to be rateable, when they are examined, will be found to have proceeded on that ground. It was so in the case of the *Staffordshire and Worcestershire* canal (d), the company were there rated for "their basins, towing paths, and that part of their canal and the locks lying within *Lower Milton*, and for the tolls and duties arising therefrom due at *Lower Milton*." There could be no doubt, that the basins, towing paths, canal, and locks, were local visible property there, and the tolls and duties

(a) *Post*, pl. 378.(b) *Post*, pl. 140.(c) *Post*, pl. 172.(d) *Ante*, pl. 99.

arising therefrom, classed and connected as they are with the local visible property rated, were considered as resulting from that local and visible property. In all the cases the tolls have arisen from the use of the canal, which is local and visible, being part of the land itself, lying within the parish where the tolls have been rated. But there is no case where tolls, detached altogether from local real property, have been held to be rateable *per se*. When, therefore, we are called upon to decide such a question for the first time, I am always disposed to go to the fountain-head, which is the act of the 43 *Eliz.*; and looking at the words of that act, I do not find any of them which extend to rate any person not being an inhabitant of the place, nor the occupier of any of the specific kinds of property mentioned in the act. And not finding any description in the statute which applies to the case of this appellant, I cannot hold him to be rateable for these tolls. — GROSE J. agreed. — LE BLANC J. The appellant is rated specifically as the lessee of the ferry, for half of the tolls or ferry dues in *M.*; and it is found, that he is an inhabitant of and lives in *S.*: and it is not stated, that he is the occupier of any property in *M.*; and that brings it to the simple question, whether a person residing out of the township be rateable for the tolls of a ferry, which tolls arise and become due to him for carrying passengers and cattle from the one shore to the other, one of which lies in the township. The origin of this rateability, if it exist at all, must be sought for in the stat. 43 *Eliz.*, which does not extend in terms to this case. At the same time if the words of it had received so extended a construction, as to include this case in the various decisions which have taken place upon the rating of proprietors of canal navigations,* I should have been disposed to have adhered to the settled course of construction. But this point not having been decided in those cases, I cannot, upon reverting to the words of the statute, consider the appellant as coming within any of the descriptions of persons rateable there given. It is contended, that he is an inhabitant of the township within the meaning of the act, and that he is also within it as an occupier of real property. Now when the word *inhabitant* is used as well as *occupier*, I must consider that by the former was meant a person who was resident in the place; for one might occupy without being resident, and the statute meant to include both; but this appellant is found to have been resident in *S.*, and in that sense is not an inhabitant of *M.* Then, as to his occupation of real property in the latter township, if this ferry and the tolls be real property, still the appellant is not the occupier of such real property as is mentioned in the act of parliament. But they are compared to the tolls of a canal, which, it is said, have been held to be rateable property within the statute: it will be seen, however, upon examination, that in all those cases the parties claiming the tolls for which they were rated, had an interest in some local and visible property within the parish connected with their interest in the tolls; as where they were made payable at their own wharfs or warehouses, where the goods carried on the canal were received or deposited; or in respect of the line of canal by which they were carried passing through the parish where the tolls were rated. The case of the owner of the packet boats, *Rex v. Jones* (a), comes very near to that of a person who has an exclusive right of carrying passengers and

(a) *Post*, pl. 219.

goods in a ferry-boat; but the packet owner was only held to be rateable for his profits in the parish where he resided, and where the boats were kept, and produced the profit to him; and he was considered not to be rateable in any other place to which the boats sailed where he was not resident. The appellant, therefore, is not rateable for his property within the words of the statute, or the decided cases upon it, either as an inhabitant or as an occupier. — *BAYLEY J.* This person is neither an inhabitant of the township within the meaning of the statute, nor an occupier of any of the species of property mentioned in it; and when we are called upon to put a construction upon the act for the first time, we ought to abide by the words of it. In a statute which mentions *inhabitant* as well as *occupier*, inhabitant must mean *resident*, otherwise it would for this purpose mean the same as *occupier*. But the appellant is said to be an occupier of the tolls, and that *tolls* have been held rateable, *eo nomine*, in several cases; but in all those cases it will be found that the persons rated were the occupiers of *lands* within the place, in respect of which the tolls in the whole or in part were payable. In *The King v. Cardington* (a), the party was rated for the *sluice* of which he was the occupier, which sluice was real property. In the case of canal tolls, the proprietors rated were the occupiers of the canals, and canals are real property; they are land applied to a particular purpose, and the tolls are the profits arising from the use of the land, and are given to the proprietors as a compensation for the use of it in that manner. Here the appellant was not an inhabitant of *M.*, and he was not an occupier thereof of any real property for which he was rateable. — Order of Sessions quashed.

(a) *Post*, pl. 172.

103. *Williams v. Jones*, *E. T.* 50 G. 3. 12 *East*, 946. — *ELLENBOROUGH C. J.* In delivering his judgment in the case of *Rex v. Nicholson* (b), said, that it would govern this case also, unless the Court should see any special ground on which to distinguish it. — *Barnes* endeavoured to distinguish it upon the circumstance of the post driven into the soil, to which the boats were sometimes made fast on the *L.* shore; but the Court considered that this did not essentially vary the present question; for the owner of the ferry was not found to have any property in the soil of the highway: and suppose he had a right to make such special use of the highway for the purpose of securing his ferry-boats, that did not make him the occupier of the highway. The facts of the case were as follow: *H. W.* was the proprietor of a ferry, across an arm of the sea, from *C.* to *A.*, and *vice versa*, and of the tolls thereof; and the king's highway from *L.* to *H.* leads to and from the said arm of the sea, within the limits of the ferry. There are five landing-places in *L.*, in *A.*, used by the ferry-boats on landing from the opposite shore, which landing-places have, within four years before the making of the rate in question, been repaired and improved by *Mr. W.* the proprietor of the ferry; and for divers years last past there have been and now is a post fixed in the ground at one of the landing-places, to which post the ferry-boats have been and are usually moored when lying on the *Anglesea* side. All His Majesty's subjects have a right to navigate this arm of the sea, and always of right land at the several landing-

The owner of a ferry, residing in a different parish, but taking the profits of the ferry on the spot by his servants and agents, is not rateable for such tolls in the parish where they were so collected, and where one of the termini of the ferry was situated, and on which shore the ferry-boats were secured by means of a post in the ground, the soil itself at the landing places being the king's common highway; and the owner of the ferry

(b) *Ante*, pl. 102.

having no property in, or exclusive possession of it.

places at their pleasure, and the proprietor of the ferry has not the sole or exclusive use of the said landing-places or either of them, but has the sole and exclusive right and privilege of conveying by his boats, passengers, &c. for hire, from a part of the said king's highway, lying in the parish of *B.*, in *C.*, to another part of the said king's highway, lying in *L.*, in *A.*, and *vice versa*. The tolls and hire due and payable for such conveyance; from *C.* to *A.*, have been paid to *W. H.*'s servants for his use, sometimes upon the said arm of the sea, a little before the arrival of the boats at the landing-places, and at other times upon the landing-places in the parish of *L.*, after the persons paying the same have landed. And the proprietor's servants have, from time to time, paid over the tolls and hire so received by them to his agent, residing in part of a dwelling-house, whereof *H. W.* is seised in fee, in the parish of *L.*, of which house one *T. B.* is tenant, and has continually been rated in his own name to the relief of the poor of the said parish of *L.*, and has paid the rates assessed upon him: and *H. W.*'s agent has never been rated, nor ever paid any poor rates. *H. W.* never inhabited or dwelt in the parish of *L.*, and no proprietor of the ferry or tolls, or other person in respect thereof, has at any time been rated for the same to the relief of the poor of the parish of *L.* before the making of the rate in question.

The corporation of *Bath* under the powers given them by 6 G. 3. c. 70. erected reservoirs for water in the parish of *A* from which by means of pipes (laid by them under the same authority) they supplied the inhabitants of the parishes of *A B* and *C* with water, and derived profit: Held that the corporation were rateable in the parish of *A* for so much of the profits arising from these reservoirs as they made in the parish of *A*, but not for the entire profits made in *A B* and *C*.

104. *Rex v. Corporation of Bath*, M. T. 52 G. 3. 14 East, 608. — The corporation of *Bath* appealed against a poor-rate for the parish of *L.*, in which they were rated as occupiers of certain springs and reservoirs in 22*l.* 10*s.* The Sessions confirmed the rate, subject, &c. An act passed in the 6 G. 3. (c. 70.) intitled, "An Act for (amongst other purposes) better supplying the inhabitants of the city, liberties, and precincts of *Bath* with water." This act (*inter alia*) after reciting that there was a scarcity of water within the city, liberties, and precincts, and that there were in the neighbourhood of the said city several springs of water belonging to the corporation, enacts that the corporation shall have full power and authority to cause water to be conveyed to the said city, liberties, and precincts, from such springs, and gives them authority to enter upon and break up the soil of any public highway, or common or waste ground, and the soil of any private ground within two miles of the city, and the soil or pavement of any street within the city, in order to drain and collect the water of the said springs, and to make a reservoir or reservoirs sufficient for keeping such water, and to erect conduits, water-houses, and engines necessary for distributing such water into the several parts of the said city, &c., and to lay under ground aqueducts and pipes most convenient for the same purpose. And the act vests the right and property of all water-courses leading from the said springs to the said city, and also all reservoirs, conduits, water-houses, engines, buildings, aqueducts, and pipes, erected or used for the purpose aforesaid, in the mayor, aldermen, and citizens of *Bath*. Under the power given by this act, the corporation made several reservoirs in the parish of *L.*, where the springs aforesaid are situated, in the neighbourhood of *Bath*; no part of the said city, &c. lying within the said parish. The reservoirs are walled in and roofed. Aqueducts and pipes are also laid under ground for conveying the water; which first pass through a part of the said parish of *L.*, called *H.*, and from thence along a certain bridge.

called the *Old Bridge*, over the river *A.*, into and through the parish of *St. James's*, and the parish of *St. P.*, which two parishes are within the city of *Bath*. All the water flowing from the said springs is collected into the said reservoirs, from each of which it is distributed by means of a main pipe and cock, under the charge of an officer of the corporation, who has no residence on the spot, but goes there twice a day, for the purpose of turning the cocks and distributing the water: and from these main pipes it is distributed by smaller pipes to the houses of the various inhabitants both in that part of the parish of *L.*, called *H.*, and in the parishes of *St. James* and *St. P.* aforesaid, the cocks being turned at stated times, by officers of the corporation. All the said pipes are originally derived from and connected with the said springs and reservoirs in *L.* The occupiers of the several houses pay a rate to the corporation for the water with which they are respectively supplied, and the amount of this rate is in the discretion of the corporation. The corporation of *Bath* has been all along in the occupation of the said springs and reservoirs, and of the land included within the walls thereof; and they are the same springs and reservoirs mentioned in the aforesaid rate. The annual profits arising to the said corporation from the water thus distributed from these springs and reservoirs, amount to 600*l.* in the whole, of which 50*l.* are collected from the houses in that part of the parish of *L.*, called *H.*, and 550*l.* from the occupiers of houses in the parishes of *St. James* and *St. P.*, in *Bath*. The whole of this 600*l.* is accounted for and paid at the office of the chamberlain of the corporation in *Bath*. The said sum of 22*l.* 10*s.*, for which the said springs and reservoirs are rated, are rated severally in the names of the respective occupiers, exclusive of the said springs and reservoirs, and the land thereof. The questions reserved were, 1st, Whether the corporation were liable to be rated at all to the poor of *L.* in respect of these springs and reservoirs? and if so liable, 2d, Whether they were to be rated in *L.* upon the whole of the profits of the water from the springs and reservoirs, or only upon so much of the profits as are collected from the occupiers of houses within the said parish? In answer to an argument drawn from the words of *Buller J.* in *Atkins v. Davis* (a); in support of the rate on the whole 600*l.*, ELLENBOROUGH C. J. said, "The difference in the case of the water being conveyed by pipes into another parish is, that the land of the other parish is made use of to earn the profit." — THE COURT entertained no doubt upon the case, and ELLENBOROUGH C. J. delivered their judgment. The mayor, aldermen, and citizens of *Bath* must be rated under the stat. 43 *Eliz.* if at all, for the description of property within-mentioned, either in the character of *inhabitants* of the parish of *L.*, or as the occupiers of some of the different kinds of property particularly specified in the act as the subjects of rate. Under various late decisions, and particularly that of *The King v. Nicholson* (b), in which the several cases on the subject are referred to, and which have been again cited on the present argument, it has been established as the sound construction of the statute 43 *Eliz.* that the word *inhabitants* in that act is only satisfied by a residence within the parish. And as there is no doubt that the corporation of *Bath* are not residents, they cannot be charged *eo nomine*, as *inhabitants* in this case; and therefore if rateable at all,

(a) *Post.*(b) *Ante*, pl. 103.

must be rated as the *occupiers* of some of the several descriptions of property enumerated in the act. That they are the occupiers of the *reservoirs*, which they are empowered to make, and in which the water, which they are also authorised to collect, is kept, and that such *reservoirs* and the water kept therein are comprehended within the legal description of *land*, (one of the descriptions of rateable property mentioned in the stat. 43 *Elix.*) will not admit of a doubt: and it is equally unquestionable, that they constitute local and visible property in the parish of *L.*, where they are situate. This disposes of the first question submitted to our opinion; viz. Whether the corporation is liable to be rated at all for their property in the parish of *L.*, where the land lies in which the springs and reservoirs are situate? As to the second question, Whether the corporation is liable to be rated in this parish for the whole of the profits of the water, which flows from the springs and reservoirs, or only for the profits collected in this particular parish? It should seem to follow as a consequence, from what has been said already, that if the corporation of *Bath* be occupiers of any local visible property, producing profit in any other parish, and falling by reasonable construction within the same description of property as the reservoirs already mentioned, they should be liable in like manner to be rated for it, *pro tanto*, in such other parish. The water is stated to be conveyed from the reservoirs in *L.*, over the river *A.*, and thence distributed into and through the several streets in the city of *Bath*, and conducted to the houses of the inhabitants there, by means of main pipes and smaller pipes derived from those reservoirs, and for which the occupiers of the several houses in these parishes in *Bath*, which are so supplied, pay a water rent to the corporation. As so large a portion of the apparatus, by the aid of which the water is conveyed along the two several parishes in *Bath*, and the soil itself within these parishes, on which these pipes rest, and on which soil the corporation are certainly, under the powers of this special act, authorised to lay them, must be considered as mainly conducive to the acquiring the water-rent, which, in so large a proportion (namely, 11 to 1, or 550*l.* out of 600*l.*), is received for the use of it in the two *Bath* parishes, it is impossible to say that the corporation ought to be rated as they are, that is, for the whole of such profits in the parish of *L.* alone; and if they ought not to have been so rated, the rate appealed against must be quashed. A great deal of stress has been laid in the argument of this case, on the part of the respondents, on the supposed authority of the case of *Atkins v. Davis and others* (a), but as the judges of the Court of King's Bench were equally divided, no decision which can be relied on as authority was come to in this Court. And although it may be collected from Lord *Loughborough's* judgment in the Exchequer-chamber, that he thought that "the proper place where the value of the whole is to be taken is the fountain head, from which the whole is to be distributed;" thereby intimating two things; first, that the whole profit should be assessed at one place; and secondly, that such place should be the fountain head: yet he adds, "it is not, however, very material to consider that; for upon the present action it is certainly sufficient to warrant the levying the distress, that here was a foundation to make a rate, and some property rateable:" And indeed upon that ground, viz. of

(a) *Post.*

the form of the action, which assumed the distress to be illegal *in toto*, and upon the difference which is to be found in the language of the stats. 27 Eliz. and 43 Eliz. did the united judgment of the Court of Exchequer-chamber proceed, and not upon the supposed rateability of the whole profits at the fountain head. In order to decide the questions reserved for our determination upon this case, it is by no means necessary or proper for us to pronounce in what parishes, besides that of *L.*, and in what proportions the corporation shall be in future charged: indeed we have no adequate materials before us for such a decision: it is enough upon the present occasion to state, that the rate in question, by which the corporation has been charged for the *whole* of their profits in that one parish, is on that account bad, and must be quashed.

106. *Rex v. Rochdale Water-works*, T. T. 53 G. 3. 1 M. & S. 634. — The company of proprietors of *Rochdale* water-works were rated to a poor rate for *S.*, for and in respect of the trunks and pipes, and other apparatus for the conveyance of water, belonging to the company, situate and being fixed in the ground, in the township of *S.*, and the profits arising therefrom within the township. Rate confirmed, subject, &c. — By an act passed in the 49th year of the king, the appellants are empowered, among other things, to lay under ground, along the public streets, and common highways, in the township of *S.*, main pipes for the conveyance of water therein; and the act authorizes the inhabitants of the said township, with the consent of the company, to lay down leaden or other pipes, communicating with such main pipes, to their respective houses, paying to the company such rate or rates for such privilege and water, as shall be mutually agreed upon by them. In pursuance of this act divers such main pipes and branches are laid and used in the township, and divers of the inhabitants thereof pay such rates as aforesaid to the said company. The rate was upon these pipes. — *Scarlett* endeavoured to distinguish this from the case of *Rex v. Corporation of Bath* (a) because here there were no reservoirs, but only pipes, and because the commissioners are only authorized to lay main pipes; the pipes communicating to the respective dwellings being laid by the respective inhabitants, who therefore ought to be rated respectively as the respective occupiers of land, *pro tanto*, each according to the extent of his respective conducting pipe. — *ELKINBOROUGH C. J.* Whether the occupiers of the houses are or are not rateable, in respect of advantages derived to them from the use of these collateral pipes, does not affect the present question. The question here is, whether the company, as occupiers of the main pipes, are rateable; what difference does it make, whether it be a reservoir of so many feet square, or a pipe of so many inches in diameter? I own I cannot distinguish this case from *Rex v. The Corporation of Bath*. — *LE BLANC J.* If this rate on the company had been simply on the leaders which carry the water to each house, the argument might have been of weight; but the rate is imposed in respect of the main pipes, and the profits arising from them. — Order of Sessions confirmed.

106. *Rex v. Shepherd*, M. T. 58 G. 3. 1 B. & A. 109. — Upon appeal against a poor rate for the parish of *W.* in the *Isle of Ely*, by which *R. S.* and others were assessed 8*l.* 8*s.* for the profits of a sloop called the *John*, and *G. P.* was assessed 3*l.* for the profits of

Where a company were empowered by act of parliament to lay under ground, through the streets of a town, main pipes for the conveyance of water, and the inhabitants, with the company's consent, to lay pipes communicating with such main pipes to their houses, paying to the company a rate for such privilege: Held, that the company were rateable to the poor in the parish where the main pipes lay in respect of those pipes, and the rates paid thereon.

(a) *Ante*, pl. 104.

The owners of a coasting vessel are liable to be rated

respect of the profits accruing therefrom, in that parish where they themselves reside, and where the ship is registered, and where her cargoes are usually received and delivered, and her freight paid, and which is the home of the vessel when unemployed, although at the time of making the rate the ship was not actually within the parish. But they are not liable to be rated for a ship which was never locally within the parish, although the profits be there received by the owners.

a sloop called the *Nene*, the Sessions confirmed the rate, subject to the opinion of this Court, on the following case: The harbour of *W.* is several miles up the river, and the sea or sand approaching it is so shallow that small vessels only can get up to the town of *W.*, which is in the parish of *Wisbech St. Peter's*. The port of *W.* comprizes the river up to the harbour in the town and parish, and a portion of the bay with which it communicates. Part of the port is not within any parish, and the remainder of it is in several different parishes of the *Isle of Ely*, and the counties of *C., N., and L.* The *John* being too large to get up to the town, never was in any part of the parish of *Wisbech St. Peter's*. The usual birth of the *John* is in the bay at *Sutton Wash*, within the port of *W.*, out of the parish of *Wisbech St. Peter's*, and about nine miles from the town and harbour of *W.* The words "*The John of Wisbech*," are painted on her stern, and when hailed at sea she answers by that name. In the usual course her cargoes are unshipped, from the *John* into smaller vessels at *Sutton Wash*, and frequently into vessels which have their home in the parish of *Wisbech St. Peter's*, and which are now rated in the said rate. The appellants are joint owners of the ship *John*, and *Stevens* is also the master, and all of them are resident inhabitants of the said parish of *Wisbech St. Peter's*, and carry on their business there, and the said sloop is registered at the custom-house in the parish of *Wisbech St. Peter's*, where her entries and clearances are made and signed. The freights for the cargoes of the *John* are usually received by the owners at their houses in the said parish of *Wisbech St. Peter's*, and the contracts for the freights outwards are also usually made in that parish, and the smaller vessels for conveying the freights from *Sutton Wash* to *W.* are provided by the owners of the ship *John*, and paid for by them, and they charge for dry goods as one freight only on the delivery in the town and parish of *Wisbech St. Peter's*, and are answerable to the consignees of the goods for any loss or damage happening to the goods in their transit from the *John* to the town and parish of *Wisbech St. Peter's*, where they are delivered; but as to coals, (the general cargoes of the *John*), the delivery is usually at *Sutton Wash*, out of the parish of *Wisbech St. Peter's*, and where her voyage and liabilities end as to coals. —The sloop, the *Nene*, is a smaller vessel, and usually receives and delivers her cargoes in the town and parish of *Wisbech St. Peter's*, where her voyage terminates; but occasionally delivers goods and coals at *Sutton Wash*, out of the parish, where in such cases her voyage terminates. When unemployed, her home is in the town and parish of *Wisbech St. Peter's*, where the appellant *G. P.*, her owner and master, is a resident inhabitant and carries on business. The sloop *Nene*, is registered at the custom-house in the parish of *Wisbech St. Peter's*, where her entries and clearances are made and signed. "*The Nene of Wisbech*," is painted on her stern, and when hailed at sea she answers by that name. The contracts for her freights outwards are usually made and the freights inwards are usually paid in the said parish of *Wisbech St. Peter's*. At the time the rate appealed against was made, the *Nene* was at *Sutton Wash* or at sea, and not within any part of the parish of *Wisbech St. Peter's*. The question for the opinion of the Court is, Whether the said sloops *John* and *Nene*, or either of them, were or was, at the time

of making the said rate, rateable to the relief of the poor of the said parish of *Wisbech St. Peter's*? Upon this case being called on the Court intimated an opinion that the *John* never having been within the parish, could not be considered as visible property there.—ELLENBOROUGH C. J. As the ship *John* was never within the parish, I cannot consider the rule by which the Court has abided in all cases, viz. that the property should be locally within the parish, as attaching upon her. That vessel has never been locally or visibly within the parish, and therefore I do not consider her as rateable. As to the *Nene* she is said to have been out of the parish at the time when the rate was made; but I cannot say that we are to measure by a stop-watch the precise position of a ship (which is in its nature a machine of passage) at the time when the rate was made. If such strictness were required, it would be almost impossible to make a ship the subject of a rate. It appears to me to be sufficient to answer the purpose of the poor laws, that the parish in which the ship is rated is the domicile of the vessel, and that the profits derived from it contribute to the ability of the occupier within the parish. In all cases the profit is earned as to the bulk out of the place. This vessel, as far as it can be predicated of such a thing, yields a profit so as to answer the description of local and visible property within the parish. It need not be ascertained with precise exactness where the ship was at the time of the rate in order to give validity to the rate; this parish was generally her home, and the vessel so far resided there that it could not be predicated of it, that it resided elsewhere, therefore it must be rated within that parish, it can be rated no where else. It seems to me, therefore, that the *Nene* was well rated in the parish of *St. Peter's*.—BAYLEY J. I think that the *Nene* was well rated in the parish of *St. Peter's*: it has been decided over and over again, and too often for us to disturb it now, that if property can be shown to be available property in the parish where the owner resides, he must be rated there in respect of such property. It is found in this case that the owner of this vessel was an inhabitant of the parish, and also that the ship's port was within the parish: she usually received and delivered her cargo there; then, if I may use the expression, where was the property domiciled? Locally within the parish of *St. Peter's*. It has been said that the ship might be lost at the time when the rate was imposed; but it must be recollected, that the rate is made in respect of by-gone profits already earned at that time, and therefore the loss of the ship could not interfere with the right of the parish to receive this rate in respect of profits antecedently received.—ABBOTT J. I think the owner of the ship *John* was not rateable in respect of that vessel, inasmuch as she was never within the limits of the parish, the rule being that the property rated must be visible property within the parish. If the Court were to depart from this rule, I think it would create great uncertainty and confusion in this branch of the law. As to the *Nene* I think the owner was rateable in respect of that vessel, as *St. Peter's* was the parish where her cargo was usually received and delivered, and which when unemployed was her home. Being a coasting vessel she would necessarily be often absent; but in the course of that employment she would often return to the parish: it may therefore fairly be said that this parish was her home,

just as the dwelling-house of a person travelling on his necessary business may be said to be his home. Looking then at the general state and condition of this vessel, I think she must be considered as property locally visible within the parish, and that her occasional absence is quite immaterial.—*HOLROYD J.* I am of the same opinion as to both points. As to the *Nene*, the owner is rated in respect of profits which had been earned by him from a vessel, which under the circumstances must be considered as visible property within the parish. In the case of *The King v. Jones*, there was no statement that the ship was in the parish at the time of the rate being imposed; but that circumstance does not I think make any difference in this case, inasmuch as *St. Peter's* was the home of the vessel, and she must be considered as belonging to this parish for the purpose of being rated.

Where a river navigation extended through several parishes, and certain tonnage dues became payable in respect of goods carried along the line of navigation, and landed at a wharf locally situate within the parish of B: Held that a rate on the proprietor of those dues for their whole amount in the parish of B, stated to be for river tonnage, could not be considered as a rate upon that part of the river locally situate within the parish of B, but as a rate upon the parts of the river situate as well within as without the parish, and that it could not, therefore, be supported: Held also, that the 41 G.3. c. 25. § 1. does not give the Court of K.B. the power of amending a poor-rate.

107. *Rex v. Mitton*, M. T. 60 G. 3. 3 B. & A. 112.—Upon an appeal against a poor-rate, for the parish of B., whereby one T. M. was rated for "River tonnage, at 100*l.*—6*l.*" The Sessions confirmed the rate, subject, &c.—The appellant was a yearly tenant, under G. W. Perrott, Esq. of that part of the navigation of the river Avon called the "Lower Navigation," which runs through the counties of W. and G., from the lock or sluice above the bridge at *Evesham* to the junction of the Avon with the *Severn* at *Tewkesbury*. The conveyance under which Mr. P. held this property, was dated the 17th June, 1760, and conveyed "all that the navigation and profits of navigation, and "passage for boats, upon the Avon, situate in the counties of "Worcester, Warwick, and Gloucester, to and from the *Severn*, up "and down the Avon, unto and from the lock and sluice next "above the bridge at *Evesham*; and also all storehouses, sluices, "locks, &c. belonging to the river Avon, and the navigation "thereupon to and from the *Severn*, up and down the Avon, unto "and from the lock and sluice next above the bridge at *Evesham*, "together with all the tolls, rates of tonnage, &c. to the navigation "belonging." By an act passed the 24 G.2. 1751, entitled, "An act for the better regulating the navigation of the river "Avon, running through the counties of *Warwick, Worcester,* "and *Gloucester*, and for ascertaining the rates of water-carriage," it was enacted, "That the said river Avon shall for ever there- "after be a free river, and all persons shall have liberty of passing "and repassing up and down the said river with boats, barges, "lighters, and other vessels laden with coal, or any other sort "of goods; and shall have liberty to sell and vend the same to "any persons, at such reasonable prices as they shall think fit, "and can get for the same; and to land the same, with the coo- "sent of the owners or occupiers of the land, at such wharfs as "shall be thought most convenient, paying, or securing to be "paid, to the owners and proprietors of the navigation, certain "rates of tonnage for all goods and merchandises carried on the "said river." The appellant was not an inhabitant or occupier of any messuage or tenement whatsoever in B., but resided in the parish of *All Saints, Evesham*, on the opposite side of the river, which flowed between the two towns of B. and *Evesham*, part of the river being within the parish of B., and the other part of it being within the parish of *All Saints, Evesham*, both which parts were navigable, and used by vessels passing along the river. On

the *B.* side of the river, and within the parish, there was a wharf communicating with the river, belonging to one *Day*, where goods were landed annually, yielding tonnage dues to the amount in the rate assessed; but no tonnage dues were received by the appellant in the parish of *B.*, nor was any account given of them in that parish to the appellant; but, as a check upon the boatmen, an account was taken at the wharf, by *Day's* servant, of all the goods landed there, which was sent over to the appellant at his house, in the parish of *All Saints, Evesham*, where the boatmen accounted to him; and he usually received all the tonnage dues on goods brought up the river from *Pershore* to *Evesham*, and landed either in the parish of *All Saints, Evesham*, or in the parish of *B.*; though, if he did not happen to be in the way when the boatmen called to give an account of and pay the tonnage dues, at the office in *All Saints, Evesham*, they accounted for and paid them on their return back, after unlading at the appellant's office in *Pershore*, where he collected the tonnage dues from those who proceeded no further up the river than to *Pershore*, or any place above that, but short of *Evesham*; there was no lock or sluice within the parish of *B.*, and when the tonnage dues were paid at *Evesham*, the boatman took back with him a certificate from the appellant of his having paid the dues at *Evesham*, in order to enable him to repass the sluice through which he came up loaded, which was situate at *Pershore*, and which was kept locked. The same amount of tonnage was due and payable by every vessel which passed *Pershore* sluice in its way to *Evesham* or *B.*, whether it proceeded as high as either of those places, or unloaded and delivered at any intermediate place, which was frequently the case, and which distance included eight different parishes where goods might be landed.—ABBOTT C. J. I am of opinion, that this rate, which has been made on the river tonnage, cannot be sustained. It has been contended, that by the words "river tonnage," we may understand the profits arising only from that part of the river which lies within the parish of *B.* It seems to me, however, that we cannot so understand those words, for they are explained to us by the subsequent facts stated in the case. From these facts, it clearly appears, that the profits accrued in respect not only of the use of that part of the navigation which was within the parish of *B.*, but also from the use of the other parts of the navigation, situate in the different parishes through which goods had passed. This is, therefore, in substance, not a rate upon the profits of that part of the river only which is situated within the parish of *B.*, but a rate upon the tonnage dues payable at the wharf there, in respect of the carriage of the goods through the other parishes. Unless, therefore, we are to supersede all the late cases by which it has been held that tolls *per se* are not rateable, we are bound to say, that these tonnage dues are not subject to this rate. The order of Sessions must, therefore, be quashed.—BAYLEY J. I am of the same opinion. Since the case of *The King v. Nicholson* (a), the Court have held themselves bound to see clearly that the property rated comes within the words of the 43 *Eliz.*, by which the rate is directed to be "by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal-mines, or saleable underwoods, in the parish." Now the party

(a) *Ante*, pl. 102.

- here, not being an inhabitant, must be brought within some of the other words, and the only other words applicable to this case are "occupier of land." Now in *The King v. Tynemouth* (a), it was decided, that the tolls of a light-house, situate in the parish of *Tynemouth*, but collected in the several ports at which the vessel, passing along the coast, afterwards arrived, were not rateable *qua* tolls in the township, and the rate was held to be bad. In *The King v. Nicholson*, the party was rated for the tolls of a ferry; he was not an inhabitant, nor did he occupy any lands or tenements, for he was not entitled to the land on either side of the river over which the ferry extended. The Court then considered the cases of *The King v. Cardington* (b), and *The King v. The Aire and Calder Navigation* (c). The former case does not fall within the principle laid down in *The King v. Nicholson*; it was a rate for the tolls of a sluice, and the party was the occupier of the sluice, within the parish in which the rate was imposed. The sluice being landed property, the party was properly rated for the tolls yielded by the sluice within the parish. The cases of *The King v. The Aire and Calder Navigation*, and *Rex v. Page*, (d) certainly do not admit of that distinction. Those decisions, however, were expressly over-ruled by this Court in the case to which I have alluded. In *Rex v. The Staffordshire Canal* (e) the company were rated "for their basins, towing-paths, and that part of their canal "and locks lying within *Lower Mitton*, and for the tolls and "duties arising therefrom due at *Lower Mitton*;" so that it appeared on the rate itself, that though it was nominally a rate upon tolls, yet it was on such tolls as arose from rateable property within the parish. In *The King v. Sir Archibald Macdonald* (g), the rate was for the *Rochdale Canal Lock Tunnel* dues or rates. Now if those dues or rates had arisen from property partly within the parish and partly without, it would have been like the present case. The only dues which the party was entitled to receive in that case, were dues in respect of vessels passing through the lock, which lock lay within the parish; and therefore all the tolls and dues there arose from what may be called parish property. The rate in this case is for tonnage dues, and it would be a good rate, provided it could be shown that the tonnage arose wholly from the use of rateable property within the parish. It is stated, however, that the canal passes through several parishes. The tolls, therefore, which are collected for goods landed at the wharf, in the parish of B., are payable to the proprietor as a compensation for the use of the whole line of the canal through which the goods pass, and not merely for the use of that part of the canal which lies within the parish of B. It is a rate, therefore, upon profits arising partly within and partly without the parish; and, upon that ground, I think that the rate cannot be supported; and, if it cannot, the case of *Rex v. The Mayor of Bath* (h), is an authority to show that the rate must be quashed. In that case the rate was upon certain springs and reservoirs; and the question was, Whether the springs and reservoirs were rateable property? and the Court decided that they were; but the whole of the rate having been imposed on one parish, the Court were of opinion, that it ought to have been imposed on different parishes, and that the parish in which the reservoirs were situate ought to have been assessed for the value of that, and that the parishes through which
- (a) *Post*, pl. 225.
- (b) *Post*, pl. 172.
- (c) *Ante*, pl. 89.
- (d) *Ante*, pl. 97.
- (e) *Ante*, pl. 99.
- (g) *Post*, pl. 226.
- (h) *Ante*, pl. 104.

the pipes conveying the water passed, ought to have been assessed for the value of the profits arising therefrom. It seems to me, therefore, that this rate, having been imposed on property partly within and partly without the parish, is bad; and that it is not a mere objection to the *quantum* of the rate.—*HOLROYD J.* It is now to be considered as an established rule that tolls, *qua* tolls, are not rateable. I do not mean to say, however, that a rate may not be made on rateable property under the denomination of tolls, provided that the property from which the tolls arise be within the parish, and the rate be confined to that property. Here the rate is upon tonnage dues. It is said that the property rated is rateable property within the parish where the tonnage dues became payable, and that, therefore, this is to be considered as a rate upon that rateable property. I think, however, that this is a rate, not only on rateable property within the parish, but on other property, which, though rateable, is rateable in another parish, and not in this. The case states, that within the parish there is a wharf communicating with the river, where goods, to the amount assessed, are annually landed. It must be taken, therefore, that the rate was made upon *all* those tonnage dues. It is also stated, that part of the navigation lies in other parishes, in the passage through which the tonnage dues arise, as well as for the passage through the part of the river which lies within the parish. Now, if the rate on the tonnage dues be, in fact, a rate on the rateable property, that is, on the whole part of the navigation in respect of which those dues are payable, it must be considered as a rate upon the profits arising, not only from that part of the navigation which is within the parish, but from that also which is not within the parish. The objection, therefore, is not merely to the *quantum*, but to the rate itself, viz. that it is a rate upon property without as well as within the parish; I think, therefore, that this rate is bad, and that the order of Sessions must be quashed.—*BEST J.* I am of the same opinion. It is now clearly established, that tolls *per se* are not rateable. The only mode by which the tolls of a canal become rateable, is by rating the land itself, or that part of the land occupied by the canal, which is locally situate within the parish; the tolls then are the profits arising from that part of the land; and the statute of *Elizabeth* authorizes the rating of such property locally situate in the parish; but it does not authorize the rating of property not situate within the parish. I think that the rate here is upon property partly within and partly without the parish, and that it is therefore bad; and that, being so, I think the order of Sessions ought to be quashed. *Peake* then applied to the Court to amend the rate, according to the provisions of 43 G. 3. c. 21. §. 1. But the Court thought that that act was confined to the Quarter Sessions; and that this Court had no power given to them to amend a poor-rate. They, therefore, quashed the order of Sessions, but not the rate, leaving that to be amended by the Sessions.—Order of Sessions quashed.

108. *Rex v. Palmer, E. T. 4 G. 4. 1 B. & C. 546. S. C. 2 D. & R. 793.*—By a rate or assessment made by the overseers, churchwardens, and others, of the parish of *Fornham All Saints*, for the relief of the poor, *S. P.* was charged in the sum of 1*l.* 1*s.* 10*d.* for a wharf and buildings situate in *Fornham All Saints*, adjoining the river *Lark*, and occupied and used for the purposes of navigation

The proprietors of an inland navigation are rateable to the relief of the poor in every parish through

which the navigation passes, as occupiers of the land situate in each parish, used for the purpose of the navigation; and, therefore, where the proprietors of such navigation, which extended through different parishes, were rated in one for the entire amount of their tolls, this court held that the rate could not be supported.

of the said river, and the towing paths, locks, sluices, and other works within the parish of *Fornham All Saints*, also occupied and used for that purpose, and the tolls arising therefrom due at *Fornham All Saints*, rated at 250*l.* Upon appeal the Sessions confirmed the rate, subject to the opinion of this Court on the following case: By an act 11 & 12 W. 3. § 1., *H. Ashley*, Esq., his heirs and assigns were empowered to make navigable the river *Lark*, alias *Burn*, from a place called *Long Common*, a little below *M.*, to *Bury*; and after making satisfaction to the land owner, *Ashley* was to have and enjoy the cuts, watercourses, towing paths, &c. in as ample and beneficial a manner as if the same by good title and sufficient conveyance in the law had been absolutely sold and conveyed to him, his heirs, and assigns. By another section *Ashley*, his heirs, and assigns were empowered to demand and receive for the freight of goods up the river from *M.* to *Bury*, or down the river from *Bury* to *M.*, at such place adjoining the river, as he, his heirs, or assigns should think fit, certain tolls or rates therein mentioned, and a proportionate rate or toll for any less distance. Mr. *Ashley*, the original undertaker, from whom the defendant derives her title, made the river navigable from *M.* to *Fornham All Saints*, a distance of twelve miles and a half. But it was never made navigable as far as *Bury*, nor beyond *Fornham All Saints* and *Fornham Saint Martin*. Half the channel (to the centre thereof) being in the former, and half in the latter parish, but the towing path and the half of one sluice and two locks are in *Fornham All Saints*, the remaining half of the same sluice and locks being in *Fornham Saint Martin*. The towing path is separated from the adjoining lands by a ditch. The appellant is not an inhabitant of *Fornham All Saints*, but resides in *Bury*. She is the owner under a distinct title of a wharf or coal-yard, of about four acres, lying in the former parish, and adjoining to and situate at the extremity of the navigation, in which said wharf are several warehouses and other buildings; different portions of this wharf or coal-yard are from time to time allotted by the agent of the appellant to the principal coal merchants who use this navigation, to the number of fourteen or fifteen. They pay no rent for these portions, but keep the division fences of their respective portions in repair. These different portions are varied from time to time by the agent of the appellant. Large quantities of coals are carted at once from the boats, and not deposited in the coal-yard; but it is necessary for the accommodation of the wholesale dealers using the navigation, that they should have a place whereon to deposit their goods, but the appellant is not bound to provide such place. The buildings and the outer fences and walls inclosing the wharf and the towing paths, locks, and sluices, are repaired by the appellant, and were erected by her or her ancestors. Up to the year 1816, the appellant was rated on a rental of 17*l.* for the coal-yard, and no rate was imposed upon the profits of the navigation. The annual value of the coal-yard, as mere land, is not above 3*l.* Since the year 1816, to the making of the assessment appealed against, she has been rated in the parish of *Fornham All Saints*, "for tolls arising from the navigation and warehouses," at 250*l. per annum*. The tolls becoming due, and received by the appellant for goods landed in the parish of *Fornham All Saints*, equal the amount of

the assessment.—ABBOTT C. J. I entertain the greatest reverence for the opinion of the learned judges who decided those cases. (a) It must be recollected, however, that when those cases came before the court, it had not been decided that tolls *per se* were not rateable. That is now fully established by the case of *Rex v. Nicholson*. (b) The proprietors of a navigation are, therefore, rateable only as the occupiers of the canal, or land covered with water, for their tolls, as profits arising out of that land so used. They are rateable, therefore, in every parish through which the canal passes, in respect of the land there situate, and so used for the canal. The true principle of rateability is this: the land is to be rated to the relief of the poor in the parish where it is productive of profit to the proprietor, and in proportion to that profit, which may be considered as in the nature of a rent received by the proprietor for the use of his land within the parish. This is very different from the case of a sluice. In that case the tolls become due for the use of the sluice itself, and the proprietor must contribute to the relief of the poor in that parish where the sluice is situate. The proprietor of a navigation is to contribute in respect of the profits of land, extending probably through many parishes; and he is to pay to each of those parishes in respect of his land locally situate within it. Here, the whole land occupied by the canal contributes to produce the entire amount of the tolls, and the proprietor of the navigation ought not to have been assessed at that amount in any one of the parishes through which the canal passes. The rate, therefore, cannot be supported, and the order of Sessions must be quashed.—Order of Sessions quashed.

(a) *Rex v. Aire and Calder Navigation*, *Ante*, pl. 89.
Rex v. Page, *Ante*, pl. 97.
Rex v. Staffordshire Canal, *Ante*, pl. 99.
 (b) *Ante*, pl. 102.

109. *Rex v. Earl of Portmore*, *E. T. 4 G. 4. 1 B. & C. 551. S. C. 2 D. & R. 798*.—Defendants were rated, as proprietors of the river *Wey*, at 32*l.* 10*s.*, being at the rate of 2*s.* in the pound, upon the supposed amount of the tolls earned within the parish. By an act of 22 & 23 *Car. 2.*, “for settling and preserving the navigation of the river *Wey*, in the county of *S.*” the soil of the river and of the banks, &c., and the locks, &c., were vested in certain persons in the said act specified, to be used and navigated by them only, their heirs and assigns, and their agents and servants, and not by any other person or persons, boat or boats, barge or vessel whatsoever, without their leave and licence. The defendants are the present proprietors of the said river and navigation, and liable as such to be rated in respect thereof. They are not themselves carriers upon the said river, nor the owners of any vessels navigated thereon; but every vessel navigated thereon is so navigated by their leave and licence, which is uniformly granted, subject to the provisions of certain rules made in pursuance of the act of parliament. By these rules the persons licensed to navigate any vessel upon the river, are required to pay to the receivers appointed by the proprietors of the navigation, a certain riverage for every ton of goods navigated on the same. The navigation extends from *Guildford* in *S.* to the river *Thames*, through several parishes, and among others the parish of *Woking*, and many tons of goods annually pass through that parish, to and fro, in vessels using the navigation to different places of destination; but the goods annually landed within the parish do not yield riverage to the amount in respect of which the defendants

The proprietors of a navigation extending through several parishes are to be rated in an intermediate parish, not in respect of the riverage becoming due in that parish for goods landed there, but in respect of the profits of the land used for the navigation situate within the parish.

are assessed. The question for the opinion of the Court was, Whether the proprietors of the navigation were rateable, except upon the amount of the riverage arising from the goods landed within the parish? If they were not rateable beyond that amount, then the rate is to be amended, by reducing it to *l.*; otherwise to stand at its present amount.—Order of Sessions confirmed.

110. *Rex v. Oxford Canal Navigation, E. T. 6 G. 4. 4 B. & C. 74.*

— Upon an appeal against a rate made for the relief of the poor in that part of the parish of Sow, situate within the county of the city of Coventry, whereby the company of proprietors of the Oxford canal navigation were rated as the occupiers of the towing-path land, and that part of the canal lying within the parish of Sow, and for the tolls and duties arising therefrom, assessed at 1600*l.*, and the sum for which they were rated was 80*l.*, the Sessions amended the rate by reducing the sum on which the company was assessed to 1200*l.*, and the sum assessed to 60*l.*, and confirmed the rate so amended, subject to the opinion of the Court of King's Bench, on the following case: The appellants were incorporated by an act of parliament of 9 G. 3., intituled "An act for making and maintaining a navigable canal from the Coventry canal navigation to the city of Oxford," and by virtue of the powers given to them by this act, they purchased and are now the owners of the canal and towing-path in the respondent parish, having no other lands, nor occupying nor possessing any other property therein. By the above act they are empowered to demand the payment of tonnage and wharfage at a certain rate *per mile* for all coal, stones, timber, and other goods carried upon or through their canal; and the tonnage commonly taken by them at the time of making the above rate was 1*d.* *per ton per mile* for coals, and 1*s.* 2*d.* *per ton per mile* for other sorts of merchandize. This tonnage is usually called the mile tonnage, as distinguished from the compensation tonnage hereinafter spoken of. By a subsequent act of parliament of 33 G. 3. c. 80., which was an act for making a new canal to be called the Grand Junction Canal, after reciting that it was apprehended the making of the intended canal would be injurious to the company of proprietors of the Oxford canal navigation, and that it was agreed that the compensations thereinafter mentioned should be made to them, as an indemnification against any such injury, it was, amongst other things, enacted, that instead of the tolls, rates, and duties which would have been payable to the company of proprietors of the Oxford canal by virtue of the above mentioned act of 9 G. 3. and certain other acts of parliament for or in respect of the coals, goods, and other things thereinafter mentioned, and made chargeable with certain rates to the said company, it should be lawful for the said company of proprietors of the Oxford canal navigation to ask, demand, take, and receive to and for their own proper use and behoof, the respective rates thereinafter mentioned; that is to say, "for all coals which should pass from the said Oxford canal into or upon the said intended canal, the sum of 2*s.* 9*d.* *per ton*, and so in proportion for a less quantity than a ton, without any regard to the distance the same should pass upon the said Oxford canal; and for all other goods, wares, merchandizes, and things which should pass from any navigable canal into or upon the Oxford canal, and from thence into or upon the said intended canal; or from the

By a canal act, the proprietors of the Oxford canal were empowered to take a certain sum *per ton per mile* upon all goods. By a subsequent act for making a new canal, reciting that it was apprehended that the making of the intended canal would be injurious to the proprietors of the Oxford canal, and that it had been agreed that an indemnification should be made to them as a compensation for such injury, it was enacted, "That instead of the mileage duty payable to the proprietors of the Oxford canal, it should be lawful for them to take for all coals which should pass from the Oxford canal into and upon the said intended canal, so much *per ton* without any regard to the distance the same should pass along the Oxford canal, and for all other goods which should pass from any other navigable canal into and upon the

"said intended canal into or upon the said *Oxford* canal, and from thence into or upon any other navigable canal (except certain articles in the act specified), the sum of 4s. 4d. per ton, and so in proportion for a less quantity than a ton, without any regard to the distance the same should pass upon the said *Oxford* canal." The act then provides for the collecting and recovering this last mentioned tonnage; and also that, in the event thereafter of such tonnage not amounting to certain specified sums within each year, the company of proprietors of the intended canal should make good the difference; and it points out the mode of ascertaining and recovering such difference. The tonnage payable to the appellants under this last mentioned act is usually called the compensation tonnage, no part of the mile or compensation tonnage is collected in the parish of *Sow*. The entire length of the *Oxford* canal is ninety-one miles. The Grand Junction canal unites with it at *B.*, and the distance from that place to where it joins the *Coventry* canal is 34 miles seven eighths, of which two miles and one eighth are in the respondent parish. This latter canal is the only navigable canal which joins the *Oxford* in this its northern part, and the proprietors thereof take the tonnage of coals upon two miles of the *Oxford* canal, being the first two miles from the junction thereof with the *Coventry* canal at *Longford*, and the proprietors of the *Oxford* canal take the tonnage of all merchandize (except coals) which are carried upon any part of the *Oxford* canal, and afterwards upon the *Coventry* canal, within three miles and a half from the junction of the two canals at *Longford*, towards *Coventry*. For coals which pass along the *Oxford* canal, in the respondent parish, the appellants receive the mile tonnage, if they do not afterwards enter the Grand Junction canal: but if they do, then they receive the compensation tonnage only, whether they have passed into the *Oxford* canal from any other canal or not. For other sorts of merchandize which pass from the *Coventry* canal into the *Oxford* canal, and thence into the Grand Junction canal, or from the Grand Junction canal into the *Oxford* canal, and thence into the *Coventry* canal, in both which cases such merchandize must necessarily pass through the parish of *Sow*, they receive the compensation tonnage; but in all other cases they receive the mile tonnage. The compensation tonnage is never exactly what the mile tonnage would have been. The appellants derive no profit whatever from their land in the parish of *Sow*, except from the tonnage payable to them by virtue of the above mentioned acts of parliament, if any part of that tonnage can legally be considered as such. The occupiers of land in the parish of *Sow* are rated in the present assessment upon their respective rents, taking those rents as the criterion of the value of the land. The appellants are rated upon the full amount of their tolls, which are calculated to amount to 1200*l.* per annum, whereas the same tolls are worth only 1000*l.* per annum to be rented by a third person. The questions for the opinion of the Court, were — First, Whether the appellants were liable to be rated for any of their tolls in the parish of *Sow*? If not, the assessment on the appellants in the parish of *Sow* was to be struck out of the rate. — Secondly, Whether they were liable to be rated in the parish of *Sow* for part of the compensation tonnage for coals passing out of the *Oxford* canal into the Grand

Oxford canal, and from thence into and upon the said intended canal, or from the intended canal into and upon the *Oxford* canal, and from thence into and upon any other navigable canal, a certain other sum per ton, without regard to the distance the same should pass from the said *Oxford* canal: Held, first, that the proprietors of the *Oxford* canal were ratable to the poor in respect of their mileage duty in every parish through which the canal passed; secondly, that they were liable also to be rated in every parish along which the canal passed for a proportion of the compensation duty.

amount of the rate was one ground of appeal stated in the notice, but on the hearing of the appeal that was abandoned, and the ground stated and relied upon was, that the appellants were not liable to be rated for their stock in trade, they not being inhabitants of the parish of *North Curry*, nor otherwise liable for the same. The assessment on the wharfs, houses, &c. was submitted to without objection.—BAYLEY J. If the question raised in this case were *res integra*, the argument addressed to us would deserve great consideration. But there have been cases in which it has been held that a party (not being a parson or vicar,) to be rateable to the relief of the poor, must either be an inhabitant or occupier of lands within the parish; and I need hardly observe, that in this branch of the law, certainty is very desirable. If the appellants in this case were liable to be rated, it must be because they come within the description of the persons upon whom the liability is imposed by the statute 43 *Eliz. c. 2.* That statute enacts, "That competent sums shall be raised by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, &c. in the said parish, to be gathered out of the same parish, according to the ability of the same parish." It has been insisted in this case, that S. and his partners are persons liable to be rated either as inhabitants or as persons coming within the meaning of the words "and other." In numerous cases, however, which have come before the Courts on the rateability of tolls, it has never been suggested that persons not coming within the description of the words, "inhabitants or occupiers," were liable to be rated under the words "and other." In *Rex v. Nicholson* (a), Lord *Ellenborough*, after stating the words of the act, says, "that tolls do not come within any one description of occupancy described by the statute, they are not lands, nor houses, &c. If, therefore, the owner be taxable for them at all, it must be as an inhabitant of the parish out of which they arise." Lord *Ellenborough*, therefore, must have considered the words "and other," not to have carried the description of the persons liable to be rated farther than the word "*inhabitants*," did. Assuming that to be the true construction of the statute, then the question in this case is, whether S. and his partners were *inhabitants* within the meaning of the statute. That word may have a very extensive sense, so as to include in it all persons possessed of property in the place. Such a construction has been put upon that word in the statute of bridges, the riot act, and the black act, but in those statutes the word *inhabitants* was the only word used as descriptive of the persons liable to be charged. From the nature of the subject matter to which it was applied, it was considered as necessarily including in it all persons having property in the place to be taxed. It has been held, accordingly, that a person occupying land in a parish, but living out of it, is compellable to receive a parish apprentice, although the statute of 43 *Eliz. c. 2.* says, that none but inhabitants and occupiers shall be bound to receive the same. But in this statute several words are used as descriptive of the persons to be taxed, viz. "every inhabitant, parson, vicar, and other, and every occupier of lands." In *Rex v. Nicholson*, the Court were of opinion, that the word *inhabitant* was not to be taken in the extensive sense which had been applied to it in the construction of the statute of bridges,

(a) *Ants.*, pl. 102.

but in a confined sense, as descriptive only of a resident within the parish.—*LE BLANC J.* said, that the word *inhabitant* was used as well as *occupiers*, and that he considered that by the former was meant a person who was resident in the place, for one might *occupy* without being resident, and the statute meant to include both. It is also stated in *Nolan's Poor Laws*, that personal property cannot be rated unless the proprietor reside in the parish. Then the question is, what is the meaning of the word "*resides*?" I take it, that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink, and sleep; and if that be so, there is no ground for saying that *S.* or his partners had a residence in the place in question. I think that, according to the former decisions, the word *inhabitants* in the 43 *Eliz. c. 2.*, must be confined to residents; and, therefore, inasmuch as the appellants were not residents within the parish, they were not liable to be rated in respect of their personal property.—*HOLROYD J.* It seems to me, that consistently with the construction put upon the words of the statute of the 43 *Eliz. c. 2.* in several cases, we must hold, that the Appellants in the Court below are not rateable. If that construction had not already been put upon the statute, the argument in favour of the rate would be entitled to attention; but, without overturning the cases where it has been held that a non-resident proprietor of tolls is not rateable, we cannot hold that the parties mentioned in this case are rateable, either as coming within the word "*inhabitants*," or the words "*and other*." It seems to me, that the latter words must mean "*other inhabitants*." The legislature never could intend to rate persons who were neither *inhabitants* nor *occupiers* of property within the parish. And unless *inhabitant* mean *inhabitant resident*, the subsequent word *occupier* will have no effect whatever. On that ground, in *Rex v. Nicholson*, it was held, that a party was not liable to be rated for tolls, unless he was an *inhabitant resident*. In the course of the argument, Lord *Ellenborough* says, "The great difficulty is to bring the case within the words of the statute 43 *Eliz. c. 2.* conferring that authority. The party rated must be either an *inhabitant* of the parish, or he must be an *occupier* of one or other of the descriptions of property mentioned in the statute." And in another place, he asks, "Whether the counsel were aware of any case where the word *inhabitant* in the statute of *Elizabeth* had been held to mean any other than *resident*?" And afterwards in giving judgment, Lord *Ellenborough* says expressly, that there is no case in which the word *inhabitant* in that statute has been held to mean any other than a *resident* within the parish. *Le Blanc J.* also seems to have considered it clearly necessary, that a party must be either a *resident* in the place, or an *occupier* of real property, in order to make him rateable; and *Bayley J.* says, "in a statute which mentions *inhabitant* as well as *occupier*, *inhabitant* must mean *resident*, otherwise it would mean the same as *occupier*." In *Williams v. Jones* (a), it was held on the same grounds, that a non-resident proprietor was not rateable for tolls of a ferry. The construction which it is contended ought to be put upon the words "*and other*," would have applied to those cases as well as

(a) *Ante*, pl. 108.

to this, and if that be the right construction, those cases have been improperly decided. I think, that according to the construction already put upon this statute, the words "and other" in this clause of the statute, must mean "and other inhabitants," and that being so, then for the reasons already given, S. and his partners were not rateable.—Order of Sessions confirmed.

V. For what Purpose the Rate may be made.

See stats. 43 Eliz. c. 2. § 1. 13 & 14 Car. 2. c. 12. § 18.

41 G. 3. c. 23. § 9.

A rate cannot be made to repay money borrowed to rebuild a work-house.

112. *Rex v. Wavell, E. T. 19 G. 3. Dougl. 116.* — A rate was made as follows: "An assessment on all and every the occupiers of lands and houses in the parish of E., for the necessary relief of the poor, and towards payment of money borrowed for repairing and rebuilding the workhouse;" the objection was, that the rate appeared to be made for a purpose not within the 43 Eliz. c. 2., viz. towards payment of money borrowed for repairing and rebuilding the workhouse. — WILLES J. Can we reject as surplusage what is a material part of the title of the rate? If we cannot, is a rate to repay money borrowed, good? *Tawney's case* is in point to this (a) that a rate cannot be made for the express purpose of reimbursing an overseer for money advanced by him, even within his year. (b) The rate cannot be supported. — ASH-HURST J. of the same opinion. — BULLER J. This rate imports to be made for two purposes; and we are desired to consider it as only made for one. I conceive that a rate cannot be made for money borrowed, even though within the year. *Tawney's case* goes that length; if it were otherwise the inconvenience might be very great. — The rate was quashed.

(b) But see now 41 G. 3. c. 23.

But overseers may make a rate to reimburse themselves for law expences necessarily incurred. S. C. Cald. 507.

113. *Rex v. Micklefield, H. T. 25 G. 3. EDITOR'S MSS.* — On an appeal against three rates, a case was made on one of them, stating, that the money raised was to reimburse the overseers for the expence of law proceedings; and it came on to be argued, when COCKELL for the respondents admitted, that the overseers might reimburse themselves for law expences necessarily incurred, but he denied that to be the case here. — WILLES and ASH-

(a) *Tawney* being overseer of the poor of *Littleport*, in the Isle of *Ely*, laid out his money for the relief of the poor, and was turned out of his office by the justices before the end of the year, by which means he lost the opportunity of making a rate to reimburse himself. Upon this he obtained a *mandamus* directed to the churchwardens and overseers of the poor to make a rate to reimburse him. It was argued, that there could be no such charge neither by the common law nor by the statute 43 Eliz. c. 2. — HOLZ C. J. We cannot order the parish or overseers to make a rate to raise money to reimburse an overseer, but only to raise money for the relief of the poor, nor can they make a rate otherwise. The act of parliament is expressly so, and must be pursued. An overseer is not bound to lay out money till he has it;

if he do, he must make a new rate for the relief of the poor, and out of that he may retain to pay himself. *Tawney* should have done so; he trusted where he needed not have done it; he has not pursued the means the statute gave him; and we cannot relieve him. — *EX FEE TOTAM CURIAM*: The *mandamus* lies not. *Tawney's case*, Hilary Term, 2 Ann. Salk. 531, 2 Ld. Ray. 1009. 6 Mod. 97. — S. P. *Rex v. Overseers of Rotherhithe*, Mich. Term, 11 G. 3. 8 Mod. 338. — *Rex v. Ware, Foley*, 10. 10 Mod. 104., and in the case of the Overseers of *Chichester*, Mich. Term, 11 Geo. 1. an order of Sessions to reimburse their predecessors for law charges was quashed on the authority of this case, *MSS.*; and the same determination on a like order on the overseers of *Llandillo*, Michaelmas Term, 2 G. 2. *MSS.*

HURST Js. inclined to think, that under the circumstances the expences of the law proceedings were properly incurred, and ought to be raised to reimburse the overseers; but they wished to have it stated, whether the vestry had directed the proceedings. — BULLER J. thought the expence properly incurred, and was of opinion the overseers wanted no authority from the parish to defend the action. The overseers must incur some cost before it is possible for them to have the authority of the parishioners; and if they are entitled to be reimbursed for any part they must for the whole, unless they misbehave themselves in the conduct of the business; but here no such misconduct appears. — The Court sent the order quashing the rates back, in order to have the case restated, as to the fact of there having been a vestry-meeting respecting the law-suit. FEARNLEY for the appellants informed the Court that the case was come back, and that it was now stated, that there had been no vestry-meeting. The case was ordered to stand for argument; but THE COURT ultimately decided the matter on a different point. (a)

(a) *Vide* 8. C. post, pl. 291—328.

114. *Rex v. The Mayor of Gloucester*, T. T. 33 G. 3. 5 T. R. 346. — Upon an appeal on account of the inequality and illegality of a rate or assessment made by the churchwardens, &c. of the parish of St. N. in the city of G., intituled, "A rate or assessment made upon every inhabitant and upon the occupiers of all lands, &c. in the parish of St. N., &c. for raising and levying the sum of 26l. 5s. as needful to be paid by the parish of St. N. for and towards the maintenance of the poor of the hospital, workhouse, or house of correction, provided for by the said act within their care, for the quarter beginning, &c. and ending, &c; and also for raising the sum of 80l. as necessary to defray the reasonable and just expences which the churchwardens and overseers shall be put to in the execution of their respective offices, or with which they now are or hereafter shall be charged and made liable to pay by any act or acts, or other lawful ways or means by virtue of their respective offices; and in case any overplus upon the settling of their accounts shall appear to remain in the hands of any churchwarden or overseer of the poor, the same shall be paid to the succeeding churchwardens and overseers of the poor, to be by them carried to the succeeding accounts of such churchwardens and overseers respectively, by a rate of six weeks, at two pence in the pound *per week*." The Court of Sessions confirmed the rate, and stated the following case for the opinion of this Court. The rate appealed against appeared to be made for the purpose of raising 26l. 5s. for the relief of the poor, and also for raising the sum of 80l. as necessary to defray the reasonable and just expences of the churchwardens and overseers in the execution of their respective offices, according to the provisions of the statute of 21 G. 3. c. 74. § 30; and the single point in discussion was, Whether the above sum of 80l. was to be considered as a just and reasonable expence under the following circumstances? — Mr. Rudge, who had been employed for some years as an attorney in conducting a litigation, commenced and carried on by order of vestry of this parish, brought in his bill amounting to 218l. 3s. 3d., on the 23d of March, 1792. New parish-officers, who continued in office when the rate in question was made, were appointed on the 9th of April following. Mr. Lane the church-

If a private act relating to Gloucester, enable the overseers, &c. to make a rate for the relief of the poor, and to include in it such just and reasonable sums as they shall be put to in the execution of their offices; and they make a rate, the title of which expresses it to be for both those purposes; this Court will not quash it, though the Sessions on an appeal state in a case that it was partly made to pay a debt incurred by the late overseers; the rate itself appearing on the face of it to be legal.

warden paid the whole of the above bill of Mr. *Rudge*, of which the 80*l.* in question made a part, out of his own money, partly in the same month of *April*, and partly in the *August* following. In *September* following, Mr. *Lane* having occasion for the money so advanced, the parish-officers, with the approbation of the vestry, agreed to borrow that sum of Mr. *Crowther*, who accordingly on the 20th of that month lent the same to the parish-officers, who immediately discharged with it the whole demand of Mr. *Lane*. The same parish-officers afterwards made the rate in question; the 80*l.* mentioned in which is intended to raise part of the sum so paid on their account to Mr. *Rudge*, and included in the above-stated transactions. This Court (of Sessions) is of opinion that the above sum of 80*l.* was necessary for the just and reasonable expences of the overseers; subject to the opinion of the Court of King's Bench, whether from the time of the delivery of Mr. *Rudge's* bill, or from the circumstances of the above transaction with Mr. *Lane* and Mr. *Crowther*, there is any legal objection to its being allowed. By stat. 4 G. 3. c. 60. it is enacted, that the corporation of the workhouse, to be established by virtue of the act, should and might from time to time under their common seal certify the sums and payments, which at their courts should be by them set down, ascertained, and charged for the several purposes thereinbefore mentioned to the mayor and aldermen of the city [of *Gloucester*] for the time being; which said mayor and any one of the aldermen were required, within the space of ten days next after such sums or payments should be to them certified, from time to time to cause the same to be raised and levied by taxation of every inhabitant and of all lands, &c. in the several parishes, &c. of the city and county of the same, and in the county of *Gloucester* adjoining, which had been usually rated therewith, not being part of the out-hamlets thereinbefore mentioned, in equal proportions, &c.; with power for the mayor and one alderman, &c. by warrants under their hands and seals, or for two justices of the peace of the county of *Gloucester*, to authorise and require the respective churchwardens and overseers to demand, collect, &c. the same within their respective jurisdictions by distress, &c. By an act 21 G. 3. c. 4. for amending the several acts for the maintenance of the poor of the said city of *Gloucester*, after reciting the stat. 4 G. 3. it is (among other things) enacted, that upon the receipt of the certificate of the money necessary to be raised for the relief of the poor from the governor and guardians, according to the provisions of the act of the 4 G. 3. it shall and may be lawful to and for the justices of the peace of the city to include with and add to the said sums mentioned and specified in the said certificate such sum or sums of money as shall from time to time be necessary to be paid to the county stock of the said city for the discharge of such expences as the justices shall be by them required or entitled to defray out of the county stock, and to direct as well the said sums so by them added, as the said sums mentioned and specified in the said certificate, to be raised; "and that the churchwardens and overseers of the poor " of the several parishes in the said city shall raise the sums " ordered to be raised, and shall and may also in addition thereto " raise such further sums as shall from time to time be necessary " to defray the reasonable and just expences which they the said

“ churchwardens and overseers shall be put to in the execution of
 “ their said respective offices, or which they now are or hereafter
 “ shall be charged and made liable to pay, by any act or acts of
 “ parliament, or other lawful ways or means by virtue of their
 “ said respective offices, by the ways and means by the said act
 “ directed,” &c. ; “ and in case any overplus upon the settling of
 “ their accounts shall appear to remain in the hands of any church-
 “ wardens or overseers of the poor, to be by them carried to the
 “ succeeding accounts of such churchwardens and overseers re-
 “ spectively.” — LORD KENYON C. J. The specious objection,
 which is made to this rate, is that as the inhabitants of a parish are
 a fluctuating body, the parish expences incurred during the occu-
 pation of *A, B, and C*, certain inhabitants, ought not to be
 defrayed by other inhabitants, *D, E, and F*, their successors ;
 and speculatively speaking, the objection seems correctly stated.
 But a system, free from that objection, cannot universally be put
 in practice, because parish expences are incurred from day to day,
 nay from hour to hour ; and no rate can be adopted to such a
 speculative degree of excellence and perfection. In this case cer-
 tain expences have been incurred in litigating points in which the
 interest of the parish was concerned ; the business was commenced
 and carried on by an order in vestry, made by those who were to
 judge for the interest of the parish ; it is not pretended that the
 expences were improper, or the amount of them too great ; and
 the vestry afterwards ordered the sum of 80*l.* to be raised to pay
 part of it. And it seems a little ungracious in the corporate body
 to make this formal objection to the rate, to which they would not
 probably have objected in their individual capacities. At present
 I will not enter into a discussion of the propriety of expending
 this money for this or that purpose when it shall be received ; but
 I am extremely glad to find a ground on which I am bound to give
 an opinion in support of this rate before we come to that point.
 The only question now before the Court is, Whether or not this
 be a legal rate, to obtain a legal end, by legal purposes ? and
 whether it be so or not must be determined by comparing the
 rate with the terms of the act of parliament under which it is
 made. That act, after directing the churchwardens and overseers
 of the several parishes to raise the sums ordered for the relief of
 the poor, enables them “ in addition thereto to raise such further
 “ sums as shall from time to time be necessary to defray the rea-
 “ sonable and just expences, which they shall be put to in the
 “ execution of their respective offices, or which they shall be
 “ charged with, and made liable to pay, by any act of parliament
 “ or other lawful ways and means by virtue of their respective
 “ offices, by the ways and means by the said act directed.”
 Now the parish-officers, in making the rate in question, have
 complied precisely with the terms of the act of parliament ; they
 have transcribed the material words of the act into the rate, and
 have not been guilty of any excess in making it. Then how is it
 possible for us, after comparing the rate with the act, and seeing
 that they correspond, to say that the rate is illegal. I studiously
 avoid saying any thing upon the question made at the bar, whe-
 ther the money, when it is collected under this rate, will or will
 not be properly applied by the overseers in paying the 80*l.* in
 dispute, as that question may be agitated on an appeal against the

(a) See now the statute 41 G. 3. c. 23.

allowance of the overseers' accounts (a), if the corporation choose to continue the same spirit of litigation; though the corporation must not take it for granted that no rate made for the purpose of reimbursing former expences can be good, because in one case mentioned in the act of parliament (b) such a rate is directed to be made. But it is sufficient for us at present to say that the rate itself is legal, being warranted by the very words of the act of parliament.—ASHHURST J. If it appear on the face of the rate that it is legal, that is sufficient. The purpose to which the case states the money is to be applied is a just and reasonable one. For the vestry thought proper to order *Rudge* to transact the business, which is the subject of expence; and after his bill was delivered the money could not have been raised before the then overseers went out of office; the bill having been delivered on the 23d of *March*, and the succeeding overseers appointed on the 9th of *April*. If all the formalities required by the act had been complied with, the money could not have been raised by the former overseers; and therefore no laches can be imputed to them for not having that which they could not do. So much for the merits of the case: then as to the form; the Court are now desired to quash a rate which appears on the face of it to be made for the purpose of raising money for the relief of the poor, and for defraying the just and reasonable expences which the parish-officers shall be put to in the execution of their respective offices. But the act of parliament expressly gives them power to make a rate for those purposes. Then if it be legal on the face of it, as being warranted by the act, we cannot quash it on account of any possible future misapplication of the money raised under it: the parties objecting to this supposed misapplication of the money may resort to another remedy hereafter, an appeal against the allowance of the overseers' accounts. In the case of *Res v. Wavell*, the rate appeared on the face of it to be a rate not authorised by law; whereas the rate in question appears on the face of it to be made for purposes which the law does authorise.—BULLER J. I hope, for the credit of the corporation of *Gloucester*, that we shall hear no more of this case.—The order of Sessions was confirmed.

If a person be appointed an overseer for four successive years, and do not make any rate in the three first to reimburse himself what he expends in those years, he can-

115. *Rex v. Goodcheap*, H. T. 35 G. 3. 6 T. R. 159.—At *Easter*, 1778, J. G. was appointed an overseer of the parish of *St. M.*; at *Easter* in the several years 1789, 1790, and 1791, he was again appointed one of the overseers of the parish, and continued in the office those four successive years. At *Easter*, 1792, *W. E.* and *W. S.* were appointed overseers, and *S.* becoming insolvent about three weeks after his appointment, *G.* was again appointed in his room for the remainder of the year ending at *Easter* 1793. *S.* while he was overseer neither paid any money for the use of the poor nor made any rate. During the four first years, be-

(b) The 3d sect. enacts, that "no *certiorari* shall be allowed for the removal of any determination of the justices, &c. until the party applying for the same shall have actually paid the sum rated and assessed upon him by the determination of such justices; which payment shall be reimbursed

"and satisfied to him out of the next rate or assessment to be made on such parish after the determination of His Majesty's Court of King's Bench shall be had and obtained thereon, provided such determination be in favour of the person applying for the *certiorari*."

gining at *Easter* 1788, and ending at *Easter* 1792, G. did not make out any account as overseer, or at any time after the expiration of any of those years, pursuant to the statute. At the expiration of the last year, ending at *Easter* 1793, he made out one general account, as overseer for the four successive years, ending at *Easter* 1792, and for that part of the year in which he served the office ending at *Easter* 1793; which account was allowed by two justices, and upon that allowance a balance of 5*l.* 1*s.* 0*d.* appeared to be due to the defendant. An appeal was lodged at the *Midsummer* Sessions 1793, being the next Sessions after the allowance of that account, and the appeal was adjourned to the *Michaelmas* Sessions following. During the four years ending at *Easter* 1792, G. expended the sum of 232*l.* 0*s.* 9½*d.* for the use of the poor; namely, for the year commencing at *Easter* 1788, 84*l.* 18*s.* 11½*d.*; for the year commencing at *Easter* 1789, 48*l.* 19*s.* 1½*d.*; for the year commencing at *Easter* 1790, 64*l.* 13*s.* 4*d.*; for the year commencing at *Easter* 1791, 33*l.* 9*s.* 4½*d.*; and was not reimbursed the same or any part thereof. Four rates were made for the relief of the poor previous to *Easter* 1792, three of which were quashed upon appeals, and the other was confirmed upon an appeal, but omitted to be collected by G. on account of the rate being informal. After the defendant was appointed an overseer for the part of the year ending at *Easter* 1793, two rates for the relief of the poor were made and collected by him, namely, one at 8 shillings in the pound, and the other at 5 shillings in the pound, out of which he reimbursed himself the money he expended for the four successive years ending at *Easter* 1792, and the remainder of the year ending at *Easter* 1793, by charging the same in the account appealed against. The appellant only became an occupier in the parish of *St. M.* in *June* 1792, and paid the rate of 5 shillings in the pound, and was not assessed to the rate of 8 shillings. If the defendant is entitled to reimburse himself the sums expended in the four successive years ending at *Easter* 1792, there is due to him the sum of 5*l.* 2*s.* 11½*d.* If on the contrary he is not entitled to reimburse himself such sums, there will be a balance due from him, after allowing him the expences of the year ending at *Easter* 1793, of 219*l.* 0*s.* 4*d.* The Sessions determined that the defendant could not legally insert in his account the expences of the four successive years ending at *Easter* 1792, but only the expences of the time when he was in office in the year ending at *Easter* 1793, and they ordered the account to be amended accordingly. — LORD KENYON C. J. As to the question of law, it is impossible to raise a doubt about it; the overseers ought not to include in their accounts charges for several years, but all items of the accounts should be confined to that year when the accounts are directed by the act to be passed; otherwise, as the inhabitants of a parish are a fluctuating body, the present inhabitants would be burdened with the expences of their predecessors. And as to the appellant not being permitted to object to the first rate, the objection is not to the rates, but to the account in which the rates are contained; and the order of Sessions was confirmed.

not in the fourth year make a rate for that purpose. Sed vide 41 G. 3. c. 23. § 9.

116. *Rex v. Seville, M. T.* 2 G. 4. 5 B. & A. 180. — This was an appeal by the defendants, who were overseers of the poor of the township of Q. against the accounts of J. R., late con-

A constable apprehended an offender for a misdemeanour —

committed in his presence in a place of religious worship, and carried him before a magistrate, and was bound over by recognizance to prosecute him for the offence : Held, that the expences of such a prosecution were not monies expended by him in doing the business of his township, and that he could not charge them in his accounts under 18 G. 3. c.19. § 4.

stable of that township. At the trial it appeared, that on a Sunday, in the month of *December* 1819, a person of the name of *Whitehead*, being in a state of intoxication, met a young woman on the road, and on his attempting to take liberties with her, she made her escape from him, and took refuge in the chapel, where divine service was just beginning; he followed her and behaved in an unbecoming and rude manner. In consequence of which he was taken into custody by the constable, (who was then in the chapel,) and the chapel-warden, and was the next day by them taken before a magistrate; and they were both bound by recognizance, to prosecute him at the next Sessions for a misdemeanor, which they accordingly did; and he was found guilty, and punished by six months' imprisonment. No notice was ever given to the overseers or other inhabitants that the prosecution was intended to be carried on at the expence of the township, nor was it mentioned or approved of, at any meeting of the inhabitants. The Sessions where the indictment against *Whitehead* was tried, were held in the month of *January* 1820, and in the *March* following the constable regularly, and in the way pointed out by the act 18 G. 3. c. 19., presented his accounts of the expences incurred by him in the discharge of his office as constable; the whole of which were allowed, except the item of 18*l.* for the expences incurred in the prosecution of *Whitehead*, the allowance of which was negated by a large majority of the meeting of the inhabitants, held for the purpose of investigating them, upon the ground that it was not a charge which, by law, the constable could make upon the township. In consequence of this refusal, the constable duly applied to a justice of the peace, for a summons for the overseers of the poor to show cause why they should not pay this sum; and, upon the overseers appearing, the magistrate made an order, allowing the above sum of 18*l.*, against which order the overseers appealed. Upon hearing the appeal, the Sessions confirmed the order.—*ABBOTT C. J.* The difficulty in this case is, to show that it was the business of the township to prosecute the individual, who in this case committed the offence; for, unless it be clearly made out to be the business of the township, it is impossible that the sums expended by the constable, in this case, can be said to be a charge in doing the business of the parish, township, or place, so as to bring it within the act of parliament. Now I am aware of no law which says that it is the business of a parish or township to enter into such prosecutions; and I am, therefore, of opinion, that these expences ought not to have been allowed by the Sessions.—*BAYLEY J.* The constable, in this case, acted perfectly right in taking the offender before a magistrate, but he should have done no more. He, however, together with the chapel-warden, enters into recognizance to prosecute, having no authority to do so. Now, before he did this, he should have considered, whether he was willing to enter into such a recognizance at his own expence; and if not, he should have endeavoured to have obtained some authority from the township, in which case it would have been different; but not having done so, I think he cannot charge these sums in his account, as monies expended on account of the township. Very mischievous consequences might arise, if the act of a constable could thus subject the township to heavy law

expences. — HOLROYD J. I am of the same opinion. The constable is entitled to charge, in his accounts, the monies expended by him in his office, on account of the township. In this case, his duty was completely at an end, when he had carried the offender before a magistrate; and to prosecute, and to be bound over by a recognizance to do so, was no part of his duty. In this respect, however, he chose to submit to the authority of the magistrate, and permitted himself to be bound over. But the act is not binding on the township. I am clearly of opinion, that these charges do not fall within the act of parliament, and that the Sessions did wrong in allowing them. — Order of Sessions quashed.

VI. *In what Proportion the Poor's Rate shall be made.*

See stat. 17 G. 2. c. 38. § 12.

117. *Dalton's Justice*, p. 253. The most reasonable way of taxing land, is according to the pound rate; and where a personal estate as goods, money, &c. are taxed, it ought to be in the same proportion as the lands, viz. the value of every hundred pounds at 5 per cent. per annum.

The poor's tax ought to be by a pound rate.

118. *Rex v. Overseers of Barnstaple*, M. T. 2 G. 2. *Foley*, 26. — PER CURIAM: We grant a *mandamus* to make a rate; but where a rate is already made, we cannot grant a *mandamus* to make an equal rate; for we will not presume that the overseers will act unjustly.

Mandamus does not lie to make an equal rate.

119. *Anonymous*, E. T. 10 W. 3. *Comb*. 479. — A *mandamus* to sign a poor's rate was directed to the justices of peace of the precinct of the cathedral church of N. They returned, that for several years past complaint had been made that the poor's rate was unequal, and that upon examination they had found that the overseers did not assess by an equal pound rate; and they gave several instances of the inequality of one assessment; and stated that one of the overseers brought another rate, which they thought more equal, and had signed it. A motion was made to send a peremptory *mandamus*, because the churchwardens and overseers may fix the rate by their discretion; and it is not necessary to be by pound rate; they might have respect to the number of the family, &c. and the person hath remedy by appeal. — And as to this point THE COURT agreed, that rent is no standing rule; for circumstances may differ, and there ought to be regard *ad statum et facultates*: the peremptory *mandamus* was refused, because the justices having two rates presented to them, signed that which they thought most equitable: neither perhaps was good, but the justices had election.

Rent is no standing rule; there ought to be a regard *ad statum et facultates*.
Vin. Abr. 424.

120. *Rex v. Audley*, M. T. 12 W. 3. 2 *Salk*. 526. — In the year 1665, a certain rate was agreed to by the inhabitants of A. which had been followed till the 11 W. 3., when a new rate was made, which, upon appeal to the Sessions, was quashed, and the old rate ordered to continue; and now it was objected that it did not appear to be a poor's rate, being called a parish levy, which might be as well for the church as for the poor, and in that case the justices had no jurisdiction. To this it was answered by counsel, that the Court will intend it. — Upon this, HOLT C. J. observed, that *Twisden J.* used to say, that if a particular jurisdiction do not show the matter to be within their authority, it

Justices have not authority to make a standing rate, or to confirm an old rate.
S. C. Holt, 576.

amount of the rate was one ground of appeal stated in the notice, but on the hearing of the appeal that was abandoned, and the ground stated and relied upon was, that the appellants were not liable to be rated for their stock in trade, they not being inhabitants of the parish of *North Curry*, nor otherwise liable for the same. The assessment on the wharfs, houses, &c. was submitted to without objection.—BAYLEY J. If the question raised in this case were *res integra*, the argument addressed to us would deserve great consideration. But there have been cases in which it has been held that a party (not being a parson or vicar,) to be rateable to the relief of the poor, must either be an inhabitant or occupier of lands within the parish; and I need hardly observe, that in this branch of the law, certainty is very desirable. If the appellants in this case were liable to be rated, it must be because they come within the description of the persons upon whom the liability is imposed by the statute 43 *Eliz. c. 2*. That statute enacts, "That competent sums shall be raised by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, &c. in the said parish, to be gathered out of the same parish, according to the ability of the same parish." It has been insisted in this case, that S. and his partners are persons liable to be rated either as inhabitants or as persons coming within the meaning of the words "and other." In numerous cases, however, which have come before the Courts on the rateability of tolls, it has never been suggested that persons not coming within the description of the words, "inhabitants or occupiers," were liable to be rated under the words "and other." In *Rex v. Nicholson* (a), Lord *Ellenborough*, after stating the words of the act, says, "that tolls do not come within any one description of occupancy described by the statute, they are not lands, nor houses, &c. If, therefore, the owner be taxable for them at all, it must be as an inhabitant of the parish out of which they arise." Lord *Ellenborough*, therefore, must have considered the words "and other," not to have carried the description of the persons liable to be rated farther than the word "*inhabitants*" did. Assuming that to be the true construction of the statute, then the question in this case is, whether S. and his partners were *inhabitants* within the meaning of the statute. That word may have a very extensive sense, so as to include in it all persons possessed of property in the place. Such a construction has been put upon that word in the statute of bridges, the riot act, and the black act, but in those statutes the word *inhabitants* was the only word used as descriptive of the persons liable to be charged. From the nature of the subject matter to which it was applied, it was considered as necessarily including in it all persons having property in the place to be taxed. It has been held, accordingly, that a person occupying land in a parish, but living out of it, is compellable to receive a parish apprentice, although the statute of 43 *Eliz. c. 2*. says, that none but inhabitants and occupiers shall be bound to receive the same. But in this statute several words are used as descriptive of the persons to be taxed, viz. "every inhabitant, parson, vicar, and other, and every occupier of lands." In *Rex v. Nicholson*, the Court were of opinion, that the word *inhabitant* was not to be taken in the extensive sense which had been applied to it in the construction of the statute of bridges,

(a) *Ante*, pl. 102.

but in a confined sense, as descriptive only of a resident within the parish.—*LE BLANC J.* said, that the word *inhabitant* was used as well as *occupiers*, and that he considered that by the former was meant a person who was resident in the place, for one might *occupy* without being resident, and the statute meant to include both. It is also stated in *Nolan's Poor Laws*, that personal property cannot be rated unless the proprietor reside in the parish. Then the question is, what is the meaning of the word "*resides*?" I take it, that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink, and sleep; and if that be so, there is no ground for saying that *S.* or his partners had a residence in the place in question. I think that, according to the former decisions, the word *inhabitants* in the 43 *Eliz. c. 2.*, must be confined to residents; and, therefore, inasmuch as the appellants were not residents within the parish, they were not liable to be rated in respect of their personal property.—*HOLROYD J.* It seems to me, that consistently with the construction put upon the words of the statute of the 43 *Eliz. c. 2.* in several cases, we must hold, that the Appellants in the Court below are not rateable. If that construction had not already been put upon the statute, the argument in favour of the rate would be entitled to attention; but, without overturning the cases where it has been held that a non-resident proprietor of tolls is not rateable, we cannot hold that the parties mentioned in this case are rateable, either as coming within the word "*inhabitants*," or the words "*and other*." It seems to me, that the latter words must mean "*other inhabitants*." The legislature never could intend to rate persons who were neither inhabitants nor occupiers of property within the parish. And unless *inhabitant* mean *inhabitant resident*, the subsequent word *occupier* will have no effect whatever. On that ground, in *Rex v. Nicholson*, it was held, that a party was not liable to be rated for tolls, unless he was an inhabitant resident. In the course of the argument, Lord *Ellenborough* says, "The great difficulty is to bring the case within the words of the statute 43 *Eliz. c. 2.* conferring that authority. The party rated must be either an *inhabitant* of the parish, or he must be an *occupier* of one or other of the descriptions of property mentioned in the statute." And in another place, he asks, "Whether the counsel were aware of any case where the word *inhabitant* in the statute of *Elizabeth* had been held to mean any other than resident?" And afterwards in giving judgment, Lord *Ellenborough* says expressly, that there is no case in which the word *inhabitant* in that statute has been held to mean any other than a resident within the parish. *Le Blanc J.* also seems to have considered it clearly necessary, that a party must be either a resident in the place, or an occupier of real property, in order to make him rateable; and *Bayley J.* says, "in a statute which mentions *inhabitant* as well as *occupier*, *inhabitant* must mean *resident*, otherwise it would mean the same as *occupier*." In *Williams v. Jones* (a), it was held on the same grounds, that a non-resident proprietor was not rateable for tolls of a ferry. The construction which it is contended ought to be put upon the words "*and other*," would have applied to those cases as well as

(a) *Ante*, pl. 108.

FIELD: Unless we see that upon the face of the rate it is unequal, we cannot interfere. Here the justices have thought it equal, and I do not see any thing in the case that shows the party complaining is prejudiced. — **ASTON J.** If the rate do not appear to us to be unequal, we cannot quash it; and so it was held in *Rex v. Brograve*. (a) — **WILLES and ASHHURST Js.**, were of the same opinion.

(a) *Ante*, pl. 125.

A rate on lands and houses at one penny in the pound, without making any distinction between farms, dwelling-houses, or cottages, which had before been respectively rated in different proportions, is unequal. See the next case.

127. *Rex v. Butler*, E. T. 20 G. 3. Cald. 93. — Two justices allowed a rate of one penny in the pound for the relief of the poor of the parish of S. — Upon the appeal against this rate, the notice, amongst other causes, set forth, that no difference or distinction had been made in assessing tenements and farms consisting of land or ground, and cottages or dwelling-houses, the latter being rated on a *par* with the former, at one penny in the pound; whereas tenements or farms ought to have been rated and assessed at one penny, and cottages or dwelling-houses at three farthings in the pound; because the clear income or produce of the latter, in general, as to the former, was at and after that rate. The Sessions confirmed this rate, and stated the following case: That before the year 1752 the occupiers of land were rated generally at about three farthings, the occupiers of houses at one halfpenny in the pound of the annual rent, but variable from 1752 to 1777; the land was rated at a halfpenny half-farthing generally, and the houses at a halfpenny; that at a vestry 1777, called for the purpose of settling the rate, the lands were rated at one penny, and the houses at three farthings; that, at a public vestry in 1778, both lands and houses were rated at one penny in the pound on the annual rent; and at a public vestry in 1779 the same way of rating as in 1778 was continued. — **LORD MANSFIELD:** The question before the Court is, Does the rate, upon the face of it, appear to be equal or unequal? Unless it is manifestly unequal, the Court will presume it equal. Circumstances may vary the value of different estates; and if this plainly appear, then what is said in *Rex v. Brograve* applies: but you take advantage of an *obiter* saying of the Court in that case, when the true legal ground of the authority is decisive against you. — **WILLES, ASHHURST, and BULLER Js.**, concurring, the order of Sessions confirming the rate was affirmed.

Whether houses are to be rated to the poor in a different proportion from land, must depend on local circumstances. S. C. Cald. 105.

128. *Rex v. Sandwich*, H. T. 21 G. 3. Doug. 562. — Certain occupiers of lands in the parish of S. had appealed to the Quarter Sessions against a poor's rate, setting forth in their notice of appeal, among other objections, "That the rate was unequal and partial, because tenements and farms, consisting of houses or grounds, were, in such rate or assessment, charged and assessed at one penny in the pound, and cottages or dwelling-houses at only three farthings in the pound; whereas such cottages or dwelling-houses ought to have been rated and assessed, on a *par* with tenements and lands, at one penny in the pound." The justices quashed the whole rate, and ordered a new equal assessment to be made, stating the following case: That the rate was an assessment of one penny in the pound on the occupiers of lands, and three farthings in the pound on the occupiers of cottages and dwelling-houses, according to their then annual rents; that, from the year 1735 to the year 1776, a constant distinction had been observed in rating houses and lands; the former having always

been rated in less proportion to their rents, at the respective times of such rating, than the latter: that the land in general, in the parish of *Sandwich*, is burthened with no particular charges that are not incident to land in general; but that both lands and houses are subject to the usual repairs and taxes generally incident to each respectively. It was contended, that on account of repairs and other incidental charges, nothing was in itself more reasonable, or more generally received, than the practice of rating houses lower than lands; that, in consequence of what seemed to be the opinion of the Court last year (a), when the same question came before them from this parish, and also in consideration of the custom stated, the parish had in the present rate revived that distinction; that the difference, therefore, which the Court had before said, they could not compel the parish to make, but which they intimated was reasonable, had now been made. On the other side it was insisted, that there was nothing in the order which imported that the Sessions did not act upon other considerations than merely the comparative value or rent of lands and houses; that the Court never had, or ever will, lay down any general rule for assessing lands and houses; that the just proportion between them must ever depend upon local circumstances; that in this parish there existed circumstances, such as would well warrant an equal assessment of each species of property, viz. that nine tenths of the burthen of the poor arose from the houses; and that the rate could not be amended, as the objection went to every name in the rate. — LORD MANSFIELD: The Court has certainly laid down no general rule as to the mode of assessing houses and lands. They certainly could not lay down any such rule either one way or the other. The proportion in which they respectively contribute must ever depend upon local circumstances; and if nine tenths of the burthen arise from the houses, such circumstance was sufficient to influence the judgment of the Court below in adjusting that proportion. The objection here goes also unavoidably to the whole rate; for it is throughout made by a rule and proportion which the justices thought unequal, and therefore they could do nothing but quash the whole. — WILLES, ASHHURST, and BULLER Js. concurring, rule discharged, and the order of Sessions, quashing the rate, affirmed.

(a) *Rex v. Butler*, ante, pl. 127.

129. *Rex v. Lakenham*, H. T. 25 G. 3. EDITOR'S MSS. — This was an appeal by the inhabitants of *L.*, against a rate made under a warrant of two justices. The objection to the rate was, that it was unequal and unjust, because persons within the parish, who were possessed of stock and personal effects, and money out at interest in several other parishes and hamlets, were not assessed in equal proportion according to their respective values, by which omission the present defendants were considerably over-rated. The warrant was grounded on the certificate of the governor and guardians of the poor under the statute 10 Ann. c. 6., empowering them to certify the sums necessary for the maintenance of the poor to the mayor and justices, who may issue warrants requiring the churchwardens and overseers to assess the said sums on the inhabitants, and on every parson, vicar, occupier of lands, houses, tenelements, tithes inappropriate, appropriations of tithes, and on all persons having and using stock and personal estates within the said city, or money out at interest, according to their several and

If it appear on the face of a poor-rate that the several proportions are unequal, the Court will quash the rate.

S. C. Cald. 522.

respective values and estates; and in case any person or place find themselves unequally taxed, an appeal is given to the Quarter Sessions. In the year 1784, the guardians appointed four persons to make an estimate and full yearly rental of the real estates, which estimate amounted to 46,760*l.*, and the supposed stock, money at interest, and personal estates, to 1,600,000*l.* In consequence of these valuations, the mode adopted for an equal assessment of the real estate was one moiety of the rack-rent, and of the supposed stock, personal estate, or money out at interest, one fortieth part of the interest thereof at 4 *per cent.*; and this proportion of rating was adopted from the great difficulty of ascertaining the real quantity thereof. The rates had been made, in pursuance of this mode, from the year 1774. At the time of making the rate in question, the guardians, upon the rental of real estates, amounting to 43,430*l.* assessed one moiety, viz. 21,715*l.*, and upon the supposed personal property, amounting to 1,269,500*l.*, assessed one fortieth part of the interest thereof, at the rate of 4 *per cent.* by which the real estate contributed towards a quarterly rate of 2298*l.*, 217*l.*, and the supposed personal estates 127*l.* The rate for the hamlet of *L.* was the proportion of the said sum of 2298*l.*, according to the above mode of assessing real estates, and at the time there was no personal estate in the hamlet of *L.* — The Sessions being of opinion, that the mode of assessment of real estates was an *equal mode*; and, respecting the supposed stock and personal estate, or money out at interest, although one fortieth part of the interest is only assessed, that such mode contained a *relative equality*, as the exact *quantum* of the whole cannot be ascertained, and more especially such part as is used in trade, confirmed the rate. This order was moved to be quashed, and LORD MANSFIELD said, that he thought this case differed from *Rex v. Hardy* (a); for that here the inequality was apparent on the face of the order. But he desired it to stand over, to try if the parties would not come to some terms; and, with the same view, it was directed by the Court that the rule should be enlarged when, the parties not having come to terms, THE COURT said, that it appeared on the rate, that the proportion of one person to another was *unequal*; and, therefore, that the rate must be quashed.

(a) *Ante*, pl. 126.

Where a navigation turns from A to B through several intervening parishes, and the tolls for the whole navigation are collected in those two parishes, they may be assessed to the poor's rates in those two parishes for the whole amount, according to the proportion collected in each. See *Rex v. Page*, *ante*, pl. 97.

180. *Rex v. Undertakers of the Aire and Calder Navigation* (b), *M. T.* 29 G. 3. 2 T. R. 660. — The churchwardens and overseers by an assessment duly made and allowed, assessed the undertakers of the navigation of the rivers *Aire* and *Calder* for the tolls and duties of the said navigation at *Leeds*, at and after the rate of 1000*l.* *per annum*; and for their lands, wharfs, houses, warehouses, and other buildings in their own occupation, at and after the rate of 27*l.* *per annum*: against the former part of the assessment the defendants appealed to the Sessions, who affirmed the rate, stating the following case: That the rivers *Aire* and *Calder* were made navigable by an act of parliament of the 10 & 11 W. 3., which act hath been amended by a subsequent act in the 14 G. 3. c. 96., under both which acts the undertakers are entitled to receive certain tolls and duties therein mentioned for all goods, &c. carried upon the rivers or cuts therein mentioned, according to the

(b) See *Rex v. Nicholson*, *ante*, pl. 102. *Rex v. Palmer*, *ante*, pl. 103.

distance which such goods shall be carried. The whole length of the navigation from *L.* to *Wheeland* measures twenty-nine miles, of which two thousand seven hundred and ninety yards in length, and no more, lie within the local limits of the township of *L.* The whole tolls and duties arising upon the whole length of the navigation from *L.* to *Wheeland*, or *Selby*, from the 1st *January* 1785, to the 1st of *January* 1786, amounted to 8234*l.* 6*s.* 2*d.* exclusive of the tolls and duties arising from the navigation from *Wakefield* to *Wheeland* and *Selby*, and the average amount thereof for three years, before the 1st of *January* 1786, was 7628*l.* 7*s.* The proportion of the tolls arising from the two thousand seven hundred and ninety yards, part of the length of the navigation, and lying within the local limits of the township of *L.*, amounted to 403*l.* 1*s.* 10*d.* *per annum*, and though upon the face of the assessment the undertakers stand only assessed at and after the rate of 1000*l.* *per annum*, yet as the houses and buildings within the township of *L.* are by the said assessment rated only at one moiety of the actual rents or real value, the undertakers stand actually assessed at and after the rate of 2000*l.* *per annum*. The undertakers of the navigation had in a year, commencing in *July* 1785, and ending *July* 1786, divided the sum of 17,000*l.* profits; but that sum was made of many articles besides the tolls and duties. The tolls and duties have been regularly and uniformly rated at the towns of *L.* and *Wakefield* from the year 1713, and at *Wakefield* from the year 1759, at the annual value of 1200*l.* *per annum*; the length of the navigation within the local limits of *Wakefield* being one thousand one hundred and eighty-nine yards, and the tolls and duties arising upon that branch of the navigation from *Wakefield* to *Selby*, or *Wheeland*, being more than that which arises upon the navigation from *L.* to *Selby*, or *Wheeland*. The mills, warehouses, and other real property of the undertakers have been rated from time to time in the townships or places where such property lies. But the tolls and duties have not been rated in any of the townships through which the navigation runs between *L.* and *Wheeland*, or *Selby*, or between *Wakefield* and *Wheeland*, or *Selby*, except at the towns of *L.* and *Wakefield*. From the year 1752, the undertakers have invariably assessed for the tolls and duties, to the maintenance of the poor in the town of *L.*, at the value of 600*l.* *per annum*; and they, or their lessees, have paid the assessments according to that value. The tolls and duties arising upon the whole length of the navigation have never in any one year during that space of time, amounted to the annual sum of 8234*l.* 6*s.* 2*d.*, but in seven years during that time they have been considerably under that annual sum. In the year 1740, upon an appeal to this Court, it was ordered that the undertakers should stand assessed at the value of 500*l.* *per annum*. In every land-tax act from the year 1709, is contained a clause, that the undertakers shall not be assessed to the land-tax in any other part, township, or place, through which the navigation runs, but at the towns of *L.* and *Wakefield*; and the undertakers have been uniformly assessed at *L.* at the same annual sums for which they have been rated to the poor's rate; and in the above-mentioned act of parliament of the 14 G. 3. is contained a clause, which enacts, "That the rivers, or any of the cuts under the authority of that act shall not be subject or liable

“to the payment of any taxes, rates, or assessments, save and except such taxes, rates, and assessments as had been and then were usually charged and assessed thereon.” — LORD KENTON C. J. The great question in this case is, Whether the rate in question on this property has been assessed in a larger proportion than it ought? It is admitted generally, that this species of property is rateable; it is also admitted, that the justices at the sessions are the proper judges respecting the equality or inequality of the rate.

(a) *Ante*, pl. 125. In the case of *Rex v. Brograve* (a), the Court said, they could not enter into the inequality of the rate, unless it manifestly appeared to be unequal; and this rule appears to have been laid down with great wisdom by the Judges who sat in this Court at that time. It has been argued, that as the whole extent of this navigation is many miles, of which that which lies in *L.* forms but a small part, the rate in question exceeds its due proportion; but that is not the rule by which these proportions are to be ascertained. It is well known that the Duke of *Bridgewater's* navigation at *Manchester* extends thirty or forty miles, within three miles of the end of which the grand trunk empties itself, and of course the tonnage in that part of the navigation exceeds beyond all comparison the proportion in any other part of it. So that it is most probable, that the part of this navigation which comes into the town of *L.* is of greater value than any other part. However, I disclaim forming my opinion upon any conjecture of this sort, though it is probably well founded, it being enough for me to say what was said by this Court in the case reported in *Burrow*, that we cannot enter into the inequality of the rate, unless it be manifestly unequal upon the face of it. Therefore, without entering into any discussion of more points which are open to it, I am clearly of opinion, that this rule ought to be discharged. — ASH-HURST J. concurred. — BULLER J., after noticing the other points of the case, said, Then it becomes necessary to consider those facts in this case upon which the law arises; and it is material to observe, that it is not stated that the tolls are collected at any other place than *L.* and *Wakefield*; for if there were any other houses in different parishes at which the tolls are collected, it would make a difference; but on this state of the case we are bound to take it, that all the tolls are collected at these two places. Taking that fact, therefore, as clear, I think the case which has been decided in this Court must govern the present. It is material to consider at what place the tolls become due. I agree that if a person has property in *Yorkshire*, and receives the profits of it in *London*, he shall not be rated for it in *London*; for a toll must be considered to be paid at the place where it becomes due. It is impossible to adopt the argument used at the bar, that the toll becomes due at the end of every mile for that mile; for it is an entire contract to carry the goods the whole distance intended, and the hire is payable at the place to which by that contract they are to be carried. The case of *Putney Bridge* (b) is an illustration of the present: there the bridge is rated in *Putney* and *Fulham* parish at 700*l.* a year in each, there being gates at each end; formerly there was no gate at *Putney* end, and then the bridge was not assessed in *Putney* at all. — GROSE J. said, that this case was abundantly too clear to require any farther comment. — Rule discharged.

(b) *Dougl.* 305.

131. *Rex v. St. Mary the Less (a)*, M. T. 32 G. 3. 4 T. R. 477. — H. E. appealed against a poor-rate made for the parish of St. M., because he was over-rated; when the appeal was allowed, and the poor-rate amended, so that the appellant might be rated for two rooms only, part of his dwelling-house, and for the garden behind it, as occupied by him together, of the yearly value of 5*l.*, instead of being rated for the yearly value of 24*l.*, at which the house with the stable and garden were charged in that assessment; “the Court of Sessions being of opinion upon the evidence given that the remaining part of the house and stable are not, nor have been, occupied by the appellant, and therefore that he ought not to be rated in respect of the same.” And they also stated the following facts: The former occupier of the whole of the premises in question had been rated at 24*l.* yearly. In 1783 the premises were not rated, because they were not occupied. In August 1783, the appellant purchased the premises for 585*l.*, and afterwards repaired the same; but neither he nor any other person has since such purchase inhabited or resided in the dwelling-house, except as hereafter mentioned, but the keys of the house always remained in his custody. The appellant resides part of his time in his prebendal house in the college at *Durham*; during which residence he frequently, for his own amusement, uses the throw or lathe, and other turning instruments, in one of the rooms of the dwelling-house in question, for an hour or two in a day, and has three chairs and a table in that room; on many of those occasions he has been attended by a whitesmith and cutler to sharpen his tools, and assist him in his work; occasionally in the winter season there has been a fire in that room, and in another of the rooms he has frequently kept corn for his horse; and these two rooms have been so used occasionally in the course of the present-year. The appellant occupies the garden, and keeps a gardener to take care of that and another garden. And it was proved on the part of the appellant that the garden in question was worth 40*s.* a year, at which rate he was willing to be rated for the same. The gardener sometimes puts his flower-pots, shrubs, &c. and some of his working tools, into another part of the dwelling-house, where other lumber belonging to the appellant is also sometimes put by his servants: but no person has ever slept or lodged in the dwelling-house, nor has any household furniture (except as above) been kept therein since the appellant purchased the premises; except that the appellant has, out of charity, permitted a poor man and his wife to occupy and live rent-free in the kitchen, between which and the rest of the house the door communicating was stopped up. The stable has not been occupied for any purpose whatever for upwards of two years, and has been for that time unfit to be used as such: but the appellant in the hunting season of the years 1787, 1788, and 1789, made use of it and a small yard annexed to it as a kennel for his hounds. It further appeared that about five years ago a person offered to take the premises in question for 25*l.* a year, which was refused. — LORD KENYON C. J. If the Sessions had confined themselves to the finding of the fact of occupation on the face of their order, the consequence stated would have followed: but that is the very question which they have left for the decision of this Court; for they say that on the evidence

If the owner of a house occupy part of it, he is liable to be rated to the poor for the whole unless there be a distinct occupation of the rest by some other person.

(a) See *Rex v. Aberystwith*, post, pl. 224.

be made for the poor of the said town, and the occupiers of lands and tenements are made chargeable, but no mention is made of tithes. The defendant was parson, and rated for his tithes. It was contended, that as tithes are not mentioned in the private statute, they were not rateable to the poor.—But THE COURT in both cases held, that they were liable; for that being liable under the 43 *Elix. c. 2.* they could not be exempted but by express words: and that as occupiers of *tithes* they were occupiers of *tenements*, which are mentioned in the act; for tithes are a tenement (a) in construction of law.

The poor's tax must be upon the parson, although he has agreed that the tenant shall take the tithes. S. C. 8 Mod. 61. Fort. 810. Foley, 25.

149. *Rex v. Lambeth*, T. T. 8 G. 1. Str. 524. — The person who farms the parson's tithes agrees with the tenant of the land, that in consideration of his paying so much he shall retain the tithes, and gather in the whole crop without dividing. The Sessions discharge the lessee of the parson, and tax the tenant of the land to the poor's rate.—PER CURIAM: The farmer of the tithes is *primâ facie* liable to the poor's rate, and unless he can throw that charge upon another, the tax must be laid upon him. The tenant of the land in this case cannot be said to be the occupier of the tithes, for he is either a person who buys the tithes, or else he is to be considered as a person excused from paying any. Though the parson may think fit to excuse a parishioner, certainly in point of law he still remains occupier of the tithes. (b) This agreement being only by parol cannot enure as an under-lease of a thing that lies only in grant. If the vendee grub up under-woods, which he has bought standing, he does not become the occupier: but if the tenant sell the whole crop standing, will that make him less the occupier of the land? We must take this tenant of the land to be like any other purchaser of the tithes, since he has no more title to them than any stranger whatsoever. When the parson or his farmer receives a sum of money in lieu of tithes, that is in law a receipt of the tithes, with this only difference, that it is not tithes in kind. In the case of a composition, as this is, or a *modus*, it was never thought but that the parson was chargeable as occupier of the tithes, there being no colour to charge the tenant of the land.—The order must be quashed.

The poor's rate is a personal tax in respect of the land, but not on the land. S. C. cited Foley, 15. 5 Co. 67.

150. *Theed v. Starkey*, M. T. 11 G. 1. 8 Mod. 314.—Covenant against an executor, for not paying taxes, according to a covenant in a lease made by his testator, where he covenanted with the lessee to pay all the taxes on the land demised; and the breach assigned was for not paying the rates to the church and poor. But upon demurrer it was objected, that the breach was not well assigned, because those rates are personal charges, and not on the land; and for this reason the defendant had judgment. And in (c) *Fitzg. 298.* *Case v. Stephens* (c), it is said to be a tax in respect of the land,

(a) 1 Vent. 173. 2 Lev. 189. Lutw. 1563. Co. Lit. 6. 159. Dyer, 83. Cro. Jac. 301. 2 Inst. 625. and the case of Powell v. Bull, Com. Rep. 267.

(b) So in the case of *Rex v. Bartlett*, E. T. 7 Ann. 17 Vin. Abr. 427. it was decided that a parson who lets his tithes to the parishioners may be taxed to the poor's rate; for the letting is but an agreement with the parishioners to re-

tain the tithes, and the parson in this case has a *modus* for his tithes; though it was objected that the parishioners were the occupiers, and so the parson not liable. And that the parson is liable, see also *Rex v. Hopkins*, 3 Keble, 255. and *Rex v. the Parson of St. Pancras*, Godbolt, 50. 68. See too *Lowndes v. Home*, post, where also *Bartlett* is cited as authority.

lying in another, and the church might fall to ruin. (a) But when there is a *farmer* (b) of the same lands, the lessor shall not be charged for them in respect of his rent, because there is an inhabitant and parishioner who may be charged, and the receipt of the rent doth not make the lessor a parishioner; for although the charge is on the person, and not on the land, it is on the person with respect to the land, for the greater equality and indifference.

(b) 2 Roll. 269.
2 Roll. Rep.
270. Cro. Eliz.
659.

134. *Holledge's case*, M. T. Jac. 1. 2 Roll. Rep. 238. — H. was lessee of a *stall* in a market-town, and for years had been used to frequent the market once a week to sell his wares, and then departed from the said town, taking all his goods with him. Among the inhabitants of the town he was charged with a rate for the reparation of the church; and on being libelled in the spiritual court moved for a prohibition. — CHAMBERLAIN C. J. By the same reasons that are urged against this application, the inhabitants of S. might charge those that come there to sell their wares. If a man take up his lodging for a week in a town, he shall not be charged to the repairs of the church, or such like taxes. — A prohibition was granted.

The lessee of a *stall* in a market town is not rateable to the poor of the parish, in respect of such stall.

135. *Earby's case*, 9 Car. 1. 2 Bulst. 354. — Upon complaint made to the justices of assize, that the overseers had assessed Sir A. E. to the poor's rate, by virtue of 43 Eliz. c. 2. for divers lands there, in the occupation of different tenants, who paid rent to him for the same: and that they did charge his tenants by their assessments, and did charge himself also; HURTON and CROKE Js. said, that by the words and meaning of the 43 Eliz. c. 2. the overseers can only assess the occupier of the land, and not the lessors, who receive the rents; the occupier of the land only being to pay the assessment, except it be specially provided for as to this payment between the lessor and lessee, and so by this to be discharged from the payment of such assessments; for by the law the occupiers of the land are only to be charged, and this in regard of their possessions, and not the lessor in regard to the rent received; and so they declared that it had been also thus resolved by all the judges of England.

The poor's rate is a charge upon the occupier with respect to the land, and not upon the landlord or lessee, with respect to his rent. 2 Roll. Abr. 289. 291. Fitzg. 297. Id. Ray. 1280. 1 Dougl. Elect. 362.

136. Complaint was also made by Sir A. E. and others, upon an undue assessment made by the said town, and overseers of the poor, contrary to the 43 Eliz. c. 2. — Hereupon it was held, and so delivered for law, by HURTON and CROKE Js., that such assessments ought to be made according to the visible estate of the inhabitants there, *both real and personal* (c), and that no inhabitant there is to be taxed by them to contribute to the relief of the

The poor's rate must be assessed upon the *visible property* only, both *real and personal*, which the occupier hath within the

(a) In the case of *Paget v. Crumpston*, E. T. 41 Eliz. Cro. Eliz. 659, *Paget* was taxed towards the reparation of the church of Bellroughton, within which parish he had land in his own hands, but was not an inhabitant, nor had any house within the parish. — And on the authority of *Jeffery v. Foster*, the Court were unanimously of opinion, that he was liable to the tax; for otherwise all churches might fall to decay, or all the charges of reparation fall upon the poorer inhabitants of the

parish. So also in *Rex v. Clap*, it was determined H. T. 29 G. 3. that a person occupying lands in a parish, but living out of it, is compellable under the 43 Eliz. c. 2. to receive a parish apprentice. 3 Term. Rep. 107. — See also Cro. Eliz. 843. 2 Rol. Ab. 289. 1 Bulstr. 20. 1 Vent. 367. Hob. 67. Bunb. 81. Salk. 164.

(c) 1 Dougl. Elect. 348. 10 Com. Jour. 361. Cowp. 554. See also *Rex v. St. Leonard, Shoreditch*, Salk. 483.

parish, and not upon his property elsewhere.

Inhabitants to be taxed according to their personal visible ability. See Cowp. 560.

Stock in trade, and the house, may be rated, but not stock and land.

Blackerley, 263.

Shops and sheds may be rated.

The toll of a corporation may be rated to the poor. S. C. Vin. Ab. 425.

S. C. Freem. 419. Cald. 150. Dougl. 305.

A bishop is liable to be rated in respect of his palace; for there can be no prescription against this tax.

Cald. 152.

Ground-rents are liable. Cald 154.

Hospital lands are chargeable. Sed vide St. Luke's, post, pl. 157.

If two several houses are inhabited by two families, they shall be rated separately,

poor in regard of any estate he hath elsewhere in any other town or place, but only in regard of the visible estate he hath in the town where he doth dwell, and not for any other land which he hath in any other place or town.—And also by HURTON and CROKE Js. This hath been so resolved by all the judges of *England*, upon reference made to them, and upon conference by them had together.

137. It is said in *Dalton*, 235., to have been resolved by the twelve judges, that the land within each parish is to be taxed in the first place equally and indifferently; but there may be an addition for the *personal visible ability* of the parishioners within that parish, according to good discretion.—*Resolutions of the Judges*, 1633.

138. Stock in trade, and the house wherein the stock is kept, may both be rated to the poor's tax, and this shall not be held to be double; but if the land be taxed, the stock upon it cannot be taxed also, for this will be double.—*Viner's Abr.* title "*Poor*," 426.

139. Things real which render an annual revenue, shall be rated as well as land, as shops, sheds, &c.—4 *Com. Dig.* p. 103.

140. *Rex v. The Corporation of Wickham*, M. T. 27 Car. 2. 3 Keb. 540.—On a motion to confirm a tax laid by the justices upon a toll of the corporation of *W.* for a rate to the poor, HALK C. J. said, that on a reference to him he was of opinion, that the toll was chargeable, though part of it was to maintain the mayor; and a *mandamus* was granted to the mayor and justices to execute the order, *nisi*. (a)

141. *The Parish of Subdeanry v. The Mayor of Chichester*, H. T. 27 Car. 2. 3 Keb. 572.—A *mandamus* was prayed to the mayor of *C.* to compel him to allow a poor's rate made on THE PALACE of the *Bishop of C.*, being within the parish of *S.*—THE COURT granted it, because there can be no prescription against the payment of this tax; and all the prebendaries that live in the same close, which is a fourth part, pay it.

142. *Rex v. Gibbs*, M. T. 3 Jac. 2. Comb. 62.—By ASTRY J. It was lately resolved by the Court, that *ground-rents* are liable to the poor's rate.

143. *Anonymous*, E. T. 1 Ann. 2 Salk. 526.—HOLT C. J. Hospital lands are chargeable to the poor's rate; for no man by appropriating his land to an hospital can exempt them from taxes to which they were before liable, and throw an additional burthen upon his neighbours.

144. *Tracey v. Talbot*, T. T. 3 Ann. before HOLT C. J. at *Ni. Pri.* 2 Salk. 531.—Upon evidence it was ruled by HOLT C. J., that if two several houses are inhabited by several families, who make and have but one common entrance or avenue for both, yet

(a) In the case of *Atkins v. Davis*, Cald. 328, 329. 338. Mr. Justice *Ashurst* said, that he held *Keeble's Reports* to be a book of no authority; but as to the case of *Rex v. Wickham*, Mr. Justice *Buller* said, it had been recognized and allowed by the Court upon all occasions; that in the course of some cases pending in the Court of King's Bench inquiry was made by

Lord *Mansfield's* directions, and it was found, that the tolls at *Wickham* had been rated ever since they were taken; that *Rex v. Cardington* and other cases have been founded on that principle; and that no point is better settled than that tolls are rateable.—See *Rex v. Miller*, Trin. 17 G. 3. post, but see *Rex v. Nicholson*, ante, pl. 102.

each house continues rateable severally; and if one family go, one house is vacant. If one tenement be divided by a partition, and inhabited by different families, viz. the owner in one, and a stranger in the other, these are several tenements severally rateable while thus severally inhabited.

145. *Rex v. Barking*, H. T. 5 Ann. 2 Ld. Raym. 1280. — Upon a reference to the Court of King's Bench upon several orders made relating to the poor's rate, the question was, Whether a farmer for his stock shall not be chargeable and taxable to the poor's rate as well as a tradesman for his stock in trade? — POWELL, POWYS, and GOULD JS., were of opinion, contrary to the opinion of HOLT C. J., that a farmer for his stock is not taxable; and an order was accordingly made, that a *farmer* shall not be charged and taxed to the poor's rates for his stock; and that a *tradesman* is to be charged and taxable for his stock in trade. (a)

146. But in the abridgement of this case, *Viner*, title "*Poor*," 426, it is said, a *farmer* shall be taxed for his riches and stock, in case the stock is more than is necessary for the carrying on his farming and paying his rent, for then it is like a stock in trade; but for stock necessary to his farming he shall not be taxed. So for extraordinary stock he shall not be charged, if it be not more than is necessary: for the act says, "every inhabitant and every occupier of land," &c. so that there may be an inhabitant that is not an occupier of land, and he must be charged in respect of his personal estate and ability, and so it is usual to tax clothiers. — NOTE: Farmers were never taxed before, nor were tradesmen ever taxed till within these few years. The order above-mentioned was for rating the farmers for the corn and hay which was in their barns and stables.

147. *Rex v. Turner*, H. T. 4 G. 1. EDITOR'S MSS. — *Turner* was the vicar of *T.*, and the overseers assessed him to the poor's rate on the sum of 95*l.*, as being the annual value and profit which he derived from the *glebe lands* and the *tithes* of the vicarage, and on appeal the Sessions adjudged that he was liable to be rated for the *glebe lands*, but not for the *tithes*, because as he had let out his *tithes* to the several persons from whom they were payable, he could not, as they were not in his own occupation, be considered as the occupier thereof, and therefore they quashed the rate generally as to the *tithes*, and confirmed it as to the *glebe lands*. — PARKER C. J. said, that he thought the vicar ought to have been considered as the occupier of the *tithes*, although let out at certain rents; but THE COURT was of opinion, that the Sessions, as they had found that he was not the occupier, ought to have eased the vicar as to the amount of the *tithes*, and put the sum deducted on those who had held them, and not have quashed the rate in this respect generally; and therefore the order of Sessions was quashed.

148. *Rex v. Shingle*, T. T. 4 G. 1. Str. 100. — The 43 Eliz. c. 2. charges every occupier of lands, tenements, *tithes*, &c. to the poor's rate. By a private statute, 9 & 10 Will. 2. c. 37. for erecting workhouses in *C.*, the poor are directed to be provided for in another manner, to the intent no other levy or assessment

though they have but one entrance. See the case of *Lee v. Gansel*. Cowp. 1—7.

A farmer is not liable to the poor's rate for his stock on the land; but a tradesman is liable for his stock in trade. 8. C. Selk. 440. but no notice taken of this point.

But if a farmer keep a larger flock than is necessary for his farm, he shall not, under that pretence, avoid being taxed as an inhabitant.

A parson is liable to be rated to the poor for the profits of his *glebe lands* and *tithes*, although he has let them out at a certain rent. S. C. Str. 77.

See *Rex v. Lambeth*, post, pl. 149.

A parson is liable to the poor's rates for his *tithes* as the occupier of a tenement.

(a) Sed vide 5 Burr. 2636., where it is said, the Court were not satisfied with the authority of this case. And see *Rex v. Brown*, post, pl. 220.

be made for the poor of the said town, and the occupiers of lands and tenements are made chargeable, but no mention is made of tithes. The defendant was parson, and rated for his tithes. It was contended, that as tithes are not mentioned in the private statute, they were not rateable to the poor.—But THE COURT in both cases held, that they were liable; for that being liable under the 43 *Elix. c. 2.* they could not be exempted but by express words: and that as occupiers of *tithes* they were occupiers of *tenements*, which are mentioned in the act; for tithes are a tenement (a) in construction of law.

The poor's tax must be upon the parson, although he has agreed that the tenant shall take the tithes. S. C. 8 Mod. 61. Fort. 310. Foley, 25.

149. *Rex v. Lambeth*, T. T. 8 G. 1. Str. 524. — The person who farms the parson's tithes agrees with the tenant of the land, that in consideration of his paying so much he shall retain the tithes, and gather in the whole crop without dividing. The Sessions discharge the lessee of the parson, and tax the tenant of the land to the poor's rate.—PER CURIAM: The farmer of the tithes is *primâ facie* liable to the poor's rate, and unless he can throw that charge upon another, the tax must be laid upon him. The tenant of the land in this case cannot be said to be the occupier of the tithes, for he is either a person who buys the tithes, or else he is to be considered as a person excused from paying any. Though the parson may think fit to excuse a parishioner, certainly in point of law he still remains occupier of the tithes. (b) This agreement being only by parol cannot enure as an under-lease of a thing that lies only in grant. If the vendee grub up under-woods, which he has bought standing, he does not become the occupier: but if the tenant sell the whole crop standing, will that make him less the occupier of the land? We must take this tenant of the land to be like any other purchaser of the tithes, since he has no more title to them than any stranger whatsoever. When the parson or his farmer receives a sum of money in lieu of tithe, that is in law a receipt of the tithe, with this only difference, that it is not tithe in kind. In the case of a composition, as this is, or a *modus*, it was never thought but that the parson was chargeable as occupier of the tithe, there being no colour to charge the tenant of the land.—The order must be quashed.

The poor's rate is a *personal tax* in respect of the land, but not on the land. S. C. cited Foley, 15. 5 Co. 67.

(c) Fitzg. 296.

150. *Theed v. Starkey*, M. T. 11 G. 1. 8 Mod. 314.—Covenant against an executor, for not paying taxes, according to a covenant in a lease made by his testator, where he covenanted with the lessee to pay all the taxes on the land demised; and the breach assigned was for not paying the rates to the church and poor. But upon demurrer it was objected, that the breach was not well assigned, because those rates are personal charges, and not on the land; and for this reason the defendant had judgment. And in *Case v. Stephens* (c), it is said to be a tax in respect of the land,

(a) 1 Vent. 173. 2 Lev. 139. Lutw. 1563. Co. Lit. 6. 159. Dyer, 83. Cro. Jac. 301. 2 Inst. 625. and the case of *Powell v. Bull*, Com. Rep. 267.

(b) So in the case of *Rex v. Bartlett*, E. T. 7 Ann. 17 Vin. Abr. 427. it was decided that a parson who lets his tithes to the parishioners may be taxed to the poor's rate; for the letting is but an agreement with the parishioners to re-

tain the tithes, and the parson in this case has a *modus* for his tithes; though it was objected that the parishioners were the occupiers, and so the parson not liable. And that the parson is liable, see also *Rex v. Hopkins*, 3 Keble, 255. and *Rex v. the Parson of St. Pancras*, Godbolt, 50. 63. See too *Lowndes v. Home*, *post*, where also *Bartlett* is cited as authority.

but not on the land, nor payable out of it; for the personal estate only is subject to it.

151. *Rex v. Southwark, H. T. 13 G. 1. 2 Str. 745.* — *R.* was charged to the poor's rate in respect of his being an occupier of a meeting-house where he preached; and on appeal to the Sessions they discharged him, and the order being brought up was confirmed. 1. Because as a preacher he is no more chargeable as an occupier than any of his audience; for it is not stated that he let out the pews, so as to make him a person that occupies and reaps a profit from it. 2. If he were liable, yet it must be expressly alleged; and the charging him in "*respect of his being occupier,*" is too uncertain.

152. *Anonymous, H. T. 1 G. 2. Poor's Sett. pl. 169.* — The question was, Whether a house converted into a CONVENTICLE, and used for no other purposes, is rateable to the *poor's tax*? — THE COURT said, they had never known an instance of such property being rated; but they granted a rule to show cause; and the order was afterwards quashed.

153. *Moxon v. Horsenail, E. T. 9 G. 2. Com. Rep. 534.* — Trespass for entering his chambers at *Barnard's Inn, London*, and taking his chair value 50s. On not guilty, the jury found a special verdict to this effect: That the parish of *St. Andrew's, Holborn*, lies part in *London* and part in *Middlesex*; that *Sir Francis Child*, alderman of *London*, 6 May, 1732, appointed overseers for that part within *London*, and two justices of peace nominated overseers for that part of *Middlesex*, and the churchwardens and overseers rated the parish to the poor, which was approved, &c. and thereby the plaintiff was rated one shilling; that the plaintiff inhabited a chamber in *Barnard's Inn*, being an attorney of the King's Bench, and a member of that society, and having that chamber for the exercise of his profession, and having no other habitation; that *Barnard's Inn* lies in that part of the parish which is within *London*; that the defendants, by virtue of a warrant from *Sir Francis Child*, then alderman, 11th July, 1733, on the plaintiff's refusal to pay the rate, distrained the said chair, being of two shillings value, as overseers of the poor; and after it was appraised and sold for two shillings, returned the one shilling overplus: that there are other chambers in *Barnard's Inn*, the occupiers of which were also rated; that *Barnard's Inn* is one of the inns of Chancery, used and inhabited by students and practisers of the law, time out of mind, and dependent on *Gray's Inn*, as an inn of court for the study and practice of the law; and if the plaintiff on this matter be a person liable to be assessed to the said tax, they find for the defendant; if not, for the plaintiff. — WRIGHT, *for the plaintiff*, argued, that he is not liable to be rated to the poor for his chamber in this case; for if it be within the statute 43 Eliz. c. 2. it must be as an inhabitant of the parish, or as an occupier of a house within the parish. By that statute the churchwardens and overseers may raise a stock for the relief or employment of the poor by taxation of every inhabitant, parson, vicar, others, &c., and of every occupier of lands, houses, &c. in the said parish, in such competent sum as they shall think fit. The word "*inhabitant*" in its largest sense comprehends every person that dwells in a place; but that could not be the meaning of the word in this act, for then all women, servants, chil-

Preacher at meeting-house not liable to poor's rate. Sett. Cases, 122.

2 Sess. Cas. 58. Vide *Robson v. Hide, post*, pl. 181.

A house converted into a conventicle not rateable. See *Robson v. Hide, post*, pl. 181. Cald. 153.

Vin. Abr. 426. Chambers in an inn of Court or Chancery are not liable to be assessed to the poor's rate within the intent and meaning of 43 Eliz. c. 2. See *Rex v. Justices of Peterborough*, Cald. 238.

- dren, &c. in a parish might be rated, which never was done. But it may be taken in a more strict sense; as where the statute of 22 Hen. 8. c. 5. for repairing bridges, enables justices of the peace to tax every inhabitant, Lord Coke saith (a), the act extends not to every person that has personal residence, as servants, &c. but to such as are householders; and this appears by the fourth branch of the statute, which gives distress on every such inhabitant in his lands, goods, chattels, &c. And it has been always held, that by the 43 Eliz. c. 2. the inhabitant is rateable in respect of his land or ability; so it was resolved in *Jeffery's case* (b); and so, by *Eyre, C. J.*, it was agreed in this Court in *Case v. Stephenson*. (c) But the plaintiff is to be considered as a guest occasionally residing in his chamber for the study and practice of the law, as an agent indeed for his clients in several parts of the kingdom. And by the order of ALL THE JUDGES OF ENGLAND (d), the attorneys are ordered to be admitted, and take chambers in some inn of Chancery, or in lodgings near, &c.; so that lodgings and chambers are looked upon as places of the same nature. A person that comes to the Term may be a lodger (e); and a person at a chamber in the Temple may take an examination in relation to a robbery, as a justice of peace dwelling in or near the hundred, which is in a distant county; which shows that he was not looked on as an inhabitant at his chamber. (g) — SECONDLY, The plaintiff cannot be charged as the occupier of an house, for it is found there are many chambers in the house, and he hath but one. By the case of *Tracey v. Talbot* (h), it seems as if the house rateable to the poor ought to be one entire house; though if several houses be joined into one, and several families live in it, or if one house be divided into two for several families, they may be rated severally: this is *hospitium*; and *domus* and *hospitium* differ. (i) A man is not chargeable for standing in the market, as in *Holledge's case*. (k) All persons in colleges and inns of court may equally be charged. — HAWKINS *contra*: The words of the statute 43 Eliz. c. 2. are express, that a rate shall be raised by taxation of every inhabitant; and there can be no prescription against an act of parliament; therefore there is no force in the argument, that chambers have not heretofore been rated. A chamber is *domus mansionalis*, and burglary may be committed by breaking and entering into it with intent to commit a felony, as it was resolved in the case of *Evans and Finch*. (l) It is objected, that the plaintiff is there as a guest; but it is found he inhabits there, and hath no other habitation; so that unless rated here he can be rated no where. It is charity to the poor, which, by the law of God and man, every one ought to pay; and an attorney hath no privilege to be exempt, although he hath privilege to excuse him from an office that interferes with his attendance at Westminster; as to be a soldier (m), to be a reeve (n), or constable. (o) Although by *Magna Charta* it is enacted that *ecclesia sit libera*, yet a parson or vicar are subject to all charges by act of parliament (p), much more an attorney; nor can any order of Court exempt them. — In reply it was admitted, that an attorney would not claim any exemption in respect of his profession, &c., but the sole question was, Whether chambers in an inn of Chancery are within the words or intent of the statute 43 Eliz. c. 2. so as to be rateable to the poor's rate? If they be so, no prescription, no orders of Court, can exempt them. But that
- (a) 2 Inst. 703.
- (b) *Ante*, pl. 133.
- (c) *Fitzg. Rep.* 298.
- (d) In M. T. 5 Ann.
- (e) See *Latch*, 127.
- (g) *Cro. Car.* 212.
Bull. N. P. 186.
3 Com. Dig. 477.
- (h) *Ante*, pl. 144.
- (i) *Hob.* 145.
- (k) *Ante*, pl. 134.
- (l) *Cro. Car.* 474.
2 Hale, 358.
Cowp. 5.
- (m) 1 Vin. 45.
- (n) *March.* 30.
- (o) *Cro. Car.* 389.
- (p) 2 Lev. 139.

they have been charged no instance can be given; and it will be equally the case of all scholars, fellows, or students in the university or inns of court. — *Ideo adjournatur*.

154. *Ayr v. Smallpeace*, E. T. 24 G. 2. MSS. — Trespass being brought against S. and others; they pleaded the general issue, according to 21 Jac. 1. c. 12.; and it appeared on the trial, that they were churchwardens, &c. of C. The question was, Whether the plaintiff being comptroller of *Chelsea College*, and residing in the comptroller's apartments there in the hospital, was rateable to the poor of the parish of C. for the apartments he occupied there by virtue of his said office? — On a verdict for the plaintiff, and a case made for the opinion of the Court, THE JUDGES held, that he was rateable. (a)

Officers belonging to, and lodging in *Chelsea Hospital*, are rateable to the poor.

155. *Duke of Portland's case*, at Ni. Pri., after H. T. 33 G. 2. *Wynne's Analysis*, p. 60. This was an action brought by his Grace against the parish officers of St. M., for a distress taken under a poor's rate, in which it was held, that where the site of a palace is demised to a subject, for a certain permanent interest, the grantees that occupy it are rateable for such property to the poor.

The site of a royal palace granted for a permanent interest is rateable to the poor.

See *Rex v. Matthews*, post, 170. Cald. 3. in notis.

156. *Rex v. Vandewall*, E. T. 33 G. 2. 2 Burr. 991. — S. V., lord of the manor of A., was charged to the poor's rate of the parish of A., in the manner following: "for the tithe, 3l. 15s.; for the manor, 2l. 5s. more; for the quit-rents, 10s. 6d. more; and for the wood-lands, 10s.:" he did not, at the time of making this rate, hold or occupy any lands, houses, tithes, coal-mines, or saleable underwoods, in the parish, parcel of or belonging to the demesnes of the manor, or otherwise, within the said parish, except the tithes for which he was charged in the rate at 150l. per annum, and the woodlands for which he was charged at 20l. per annum. The lands from which the quit-rents arose were free and copyhold lands holden of the manor, and in the occupation of divers persons tenants of the manor, or their lessees or under-tenants, who were respectively charged and assessed for the said lands in the said rate, as occupiers thereof, according to the rack-rent of the lands; but the quit-rents were not otherwise charged in the rate, than by the charge on S. Vandewall under the article of quit-rent. The profits of the manor, exclusive of the quit-rents, arose by and consisted of escheats, heriots, reliefs, fines on the admission, deaths and purchases, and other casualties arising within the manor; which, together with the quit-rents, were by computation *communibus annis* 111l. a year; viz. the quit-rents 21l. and the other profits of the manor 90l. per annum. It did not appear that the quit-rents and the manor, or either of them, had ever been rated to the poor of A. till within two years last, and since V. had purchased the same, in or about the year 1754. — THE COURT,

The quit-rents and casual profits of manors not liable to be rated to the poor. S. C.

1 Bl. Rep. 212. See *Hull's case*, Carth. 14. and *Coombs v. Brackley*, 4 Mod. 903. Comb. 263. Cald. 154. 346.

(a) THE COURT held him to be chargeable, not as a servant of the hospital, or as an inhabitant and occupier of the rooms therein, but as having a separate and distinct apartment, which they considered as his dwelling-house; and this opinion was grounded on a then recent and unanimous determination of all the

Judges upon a like question in the case of *Greenwich Hospital*, concerning the payment of the *Window Tax*; in which they held, that the *Window Tax Act* extended to the apartments of the officers belonging to that hospital. 2 Burr. 1060. 1064. and see *Rex v. St. Luke*, post, pl. 157.

after two arguments, took some days to consider of the point, and afterwards LORD MANSFIELD very shortly declared, "That these quit-rents and casual profits of the manor are not rateable to the poor's tax;" which, he said, was so clear, that there was no need to enter into reasonings about it. They were never rated before in this parish; and, as far as appears to us, the rating such quit-rents and casual profits has never been at all attempted before; and there is no colour for this attempt now, after more than a century and a half since the making of the act of parliament upon which it is grounded.

St. Luke's Hospital not liable to the poor's rate.
S. C. 1 Bl. Rep. 249.
See *Rex v. St. Bartholomew*, post, pl. 161.
Cowp. 83.
Cald. 153. 154.
4 Burr. 2455.

157. *Rex v. Occupiers of St. Luke's Hospital*, M. T. 1 G. 3. 2 Burr. 1053. — The case stated, that in the poor's rate for the parish of *St. Luke* made in the year 1757, was the following article, viz. "The occupiers of a messuage or tenement and premises called *St. Luke's Hospital for Lunatics*, rent 80*l.*, rate 2*l.* 13*s.* 4*d.* for a quarter of a year:" that by indenture made in 1750, between the corporation of *London* on the one part, and *James Sperling* and several others of the other part, the ground on which the hospital was built, and some buildings at the time of the demise standing thereon, were demised for the purpose of erecting AN HOSPITAL FOR LUNATICS, for the term of thirty-two years, yielding a rent, with covenant to apply the whole or part of the premises to the purpose of an hospital for lunatics, with clause of re-entry in case of non-payment of rent, or if the premises should be converted to any other use than that of the charitable design for poor lunatics; that before erecting the said hospital, twenty-nine houses were situate upon the land and premises in and by the said indenture contained and demised; that by the several rates made by the overseers of the poor for the relief of the poor within the parish of *St. Luke*, for, in, and during the several years between the year 1744 and the date of the said indenture, the said twenty-nine houses were estimated at the annual value of 196*l.*; that in the year 1745, the said twenty-nine houses being assessed in the rate made in the said year for the relief of the poor within the said parish, after the proportion of 3*s.* in the pound sterling, did yet pay and yield no more to the said overseers, in satisfaction of the said rate, and towards the relief of the poor, than 10*l.* 1*s.*; that in the year 1746, the said twenty-nine houses being assessed to the poor at 3*s.* in the pound, yielded no more than 8*l.* 11*s.*; and that in the year 1747, being at 3*s.* 3*d.* in the pound, yielded no more than 8*l.* 14*s.* 9*d.*; that in the year 1748, being assessed *ut supra* at 3*s.* in the pound sterling, they yielded no more than 7*l.* 1*s.*; that in the year 1749, being assessed at 3*s.* they yielded no more than 6*l.* 3*s.*; that in 1750, being assessed at 2*s.* 9*d.* they yielded no more than 2*l.* 8*s.* 9*d.*: that the premises demised were accordingly built and converted into the hospital in the rate mentioned, called *ST. LUKE'S HOSPITAL FOR LUNATICS*, for the affording a charitable and free sustentation and cure to poor and helpless lunatics; that every apartment and parcel of the said premises so built and converted into such hospital as aforesaid, is laid out and applied, either in wards or cells, for the lodging of such lunatics; in offices necessary for their sustentation and cure; or in apartments necessary for persons who are hired from time to time to attend on such lunatics for their better sustentation and cure, and in no other apartments or buildings

whatsoever; that the said edifice was originally erected, and still is supported, and many very poor and helpless lunatics have been and still are sustained and taken care of therein; that the menial servants attending upon such lunatics have been and still are hired and paid, and all other expences relating to and necessary for maintaining the said hospital and charity have been and still are from time to time defrayed and borne by the free and voluntary contribution of divers persons, out of whom a committee annually is appointed, who meet weekly to order the admission and discharge of patients, and hiring and retaining servants, the payment of bills, and the regulation of all other matters relative to the maintenance and upholding of this charity; that none but such poor and helpless lunatics, and the persons necessarily attending upon them, have any kind of dwelling or occupation in the hospital; that *Joseph Mansfield* (the appellant) is the principal person hired from year to year, by the committee of contribution; that he receives certain wages, lives in the hospital for the purposes of attending on the lunatics, and has no other abode, occupation, or establishment therein; that the said *James Sperling, &c.* or any of them, their or any of their executors, administrators, or assigns, have not, nor ever had, or can have any profit, benefit, or advantage from the said premises, or any part thereof, nor any possession or occupation thereof, otherwise than as aforesaid; and that the Sessions at *Hicks's Hall*, upon consideration of the circumstances above set forth, was of opinion, "That the said tenement called *St. Luke's Hospital* ought to be assessed and rated "towards the relief of the poor, by the said rate; and doth accordingly dismiss the said appeal, and confirm the said rate."

—**LORD MANSFIELD** now delivered the opinion of the Court: Cases of this kind depend upon the particular nature of the respective hospitals; each stands upon its own distinct circumstances; therefore no general consequences will arise from the determination of this particular case. The *land tax* differs from the *poor's tax*; the landlord who receives the rent is to pay the land tax, but the poor's tax is payable by the occupiers; therefore the rating hospital lands to the land tax is not applicable to the present question. The occupier ought to be rated regularly by name; but in the present case, it is more than a mere defect in form. The fault in form here arises from the essence of the thing; for if they cannot fix upon some particular person who may properly be rated as occupier of this building, it follows, as a necessary consequence, that no rate can at all be made upon it. As to the argument that has been urged in support of the order, "that a proprietor of lands or houses cannot, by his own private voluntary act, discharge such his property from payments legally due, to other persons upon and out of it," it does not hold true in fact; for this rate payable to the parish, as well as several other payments arising from property and chargeable upon it, does and must depend upon the will of the proprietor. The owner of a house may, if he please, pull it quite down, and convert it into a telf. The owner of lands may, if he please, suffer them to lie barren and unoccupied. Tithes, and the right of them, vary according to the different species of the produce of the land; yet the landholder may sow it, or plant it, or use it in the manner he likes best, or even not at all if he so chooses. The material ques-

tion in this case is, Who can be named and charged as the occupier? There are only three sorts of persons that occur to me. If they can find any others who may be properly charged as occupiers, such other persons will not be included in or affected by the opinion which we now give. The only persons that I can think of, are, 1st, the five lessees; 2dly, the servants attending this charity; and, 3dly, the poor mad persons who are the objects of it. FIRST, As to the lessees, mere nominal trustees cannot be esteemed occupiers, or rated as such. Besides, these lessees are expressly excluded, by a special proviso (a) inserted in the lease, from converting the building to any other than this special use, and the lease is to determine and become void if they do. They are so far, therefore, from being occupiers of it, that they are merely nominal, mere instruments of conveyance, and have no more interest in the thing than the crier of the Court of Common Pleas has when he is named as the last vouchee in a common recovery. — SECONDLY, As to the servants attending this charity, they are not in a like situation with the officers of *Chelsea Hospital* (b), or of the other charitable foundations that have been mentioned at the bar, where there are large distinct apartments appropriated to the use of the respective officers, wherein they and their families reside. Those officers are not charged as servants of such hospitals, or as inhabitants and occupiers of the ordinary rooms and lodgings therein, but as having separate and distinct apartments, which are considered as their dwelling-houses. The cases that have been determined by the judges relating to the window tax are uniform in rating officers of hospitals for their distinct apartments; but in this hospital there are neither any such officers nor any such apartments as were in those cases determined to be rateable. If the first of these orders, which rated *Joseph Mansfield* as the occupier of the hospital, had stood as it was originally drawn up, without being afterwards altered (c), and if *Mansfield* had actually had a separate and distinct apartment in it, (which is not now pretended,) yet certainly he could not have been rated for any thing more than his own particular and distinct apartment: however, that matter ceases now to be any part of the case, there being no foundation by the new order to ground such a question upon. — THIRDLY, As to the poor miserable wretches who are the unhappy objects of this charity, it would be too gross to conceive them to be proper persons to be rated to the relief of the parish; therefore it is unnecessary to say any thing on this head; and the rather, as it appeared so very unreasonable to the counsel themselves who argued in support of the order, that they gave it up. And if no person can be found who is rateable to this tax, it follows, by necessary consequence, that there can be no rate at all: therefore the order must be quashed. (d)

158. *Rex v. Minchin-Hampton*, H. T. 2 G. 3. 3 Burr. 1308. — S. S. was owner and occupier of two hundred and fifty acres and upwards of wood-land in M. H.; the wood consisted chiefly of beech, and some oak and ash; there was no coppice-wood; and the underwood was left to grow as standards. Great quantities

(d) See *Harrison v. Bullock* and the limits of an hospital appropriated to others, Hil. 28 G. 3. 1 H. Blac. 68. where an officer of the hospital for the time being, is not assessable to the land tax.

(a) 3 Burr.
1056.

(b) Vide ante,
pl. 154.

(c) See 2 Burr.
1054.

Woods consisting of timber-trees, where the underwood is left for standards, are not rateable.

of such beech-wood had yearly been cut and sold by S., particularly in the two last years, forty or fifty cords each year, for fire-wood, of the value of from twenty-three shillings to twenty-six a cord. All the wood so cut for cord-wood was of thirty years growth, or upwards; and some of sixty or eighty years; and, generally, from ten to twenty inches square. Many of the largest beech trees cut in such wood, were sold as cord-wood and faggots for fire-wood; and the others for making gun-stocks, saddle-trees, card-boards; and some part for building. Pigs were let run in the woods, for the eating of the masts, for which the proprietor had a pecuniary profit. Twenty pounds' worth of such wood is sold for fire-wood to twenty shillings' worth sold for any other purpose. In the last year there was a clear fall of three or four acres. The Sessions were of opinion, that such woods were not rateable to the poor's rate. It was contended, that these under-woods, as being "*saleable underwoods*," within the express words of 43 Eliz. c. 2. were rateable, though some part of the produce of the two hundred and fifty acres had been used for building: for it is stated that twenty pounds' worth was sold for twenty shillings' worth used in building. But on the other side it was insisted, that beech was esteemed timber in that country, and that it ought to have been, and was intended to have been so stated. The case was sent down again, and on the Sessions finding that by the custom of the country where the aforesaid *beech*, *oak*, and *ash* trees grow, *BEECH* is timber, the order of Sessions was affirmed.

159. *The Smelting Company v. Richardson*, M. T. 3 G. 3. 3 Burr. 1341. — Trespass for taking a distress, and verdict for the plaintiff, subject to the opinion of the Court on a question, "Whether the plaintiffs, who were lessees of certain lead-mines in the parish of A., in the county of C., and who paid no rent, but only a certain part of the lead ore gotten thereout, were liable, in respect of the said *lead-mines*, to be rated to the relief of the poor?" And it was agreed, that it must be determined upon the general question, Whether *lead-mines* are rateable to the poor? — LORD MANSFIELD: The words of the 43 Eliz. c. 2. are *coal-mines*, not mentioning any other kind of mines; and that is equal to an express exception or exclusion of all other mines; for coal-mines are not lead-mines, tin-mines, copper-mines, iron-mines, or any other but coal-mines, and there were at that time other mines in this country. These other mines are governed by particular laws (a); the worker of them is not always the owner of the soil; the particular laws of them give the right of working, under certain regulations and conditions, to other persons than owners or lessors, or persons having any right of property in them. This alone might be a sufficient reason, to except them out of this act of parliament. And as there may be a reason for the strict letter of the statute, and none appears for extending it beyond the letter, we have no ground or authority or pretence for giving it that extensive construction, nor is there any foundation for imagining that the legislature meant so. And the fact upon certificates (though the certificates do not exactly concur upon every particular) appears to be, "that lead-mines are not rated throughout England, and particularly in *Derbyshire*, *Somersetshire*, and *Cornwall*;" and my brother *Adams*, who was desired by us to inquire, gives the same account, upon his return from the

Lead-mines, the lessees of which pay no rent, but only a certain part of the ore raised, are not rateable to the poor.
8. C. 1 Bl. Rep. 389.
Cowp. 451.
Cald. 155. 331.

(a) See upon this subject, 4 Inst. 329. Plowd. 317. Cro. Car. 333. 12 Co. 10. 1 Rol. Ab. 547. a small octavo volume, "Laws of the Stannaries," published by authority at Truro, 13 Sept. 1753; and the statute 16 Car. 1. c. 15.

Western circuit, with regard to the tin-mines in *Cornwall*. I am now keeping clear of inhabitancy, which is no part of this case; for these persons are not rated as inhabitants, but only as lessees. — DENNISON J. In 43 *Eliz. c. 2.* coal-mines are put as an exception; not as an example; and the specifying them excludes other sorts of mines. — WILMOT J. Lead-mines and coal-mines essentially differ as to the expence of finding, though not so much in the expence of working. There is infinite expence and uncertainty in finding lead-mines; they are governed by particular laws; and the finder is obliged to pay certain proportions to the owner of the land. Therefore it is reasonable that lead-mines should not be put upon the same foot with coal-mines; because there is much greater risk in the search after them, even so much that a man may be ruined by it instead of succeeding. The legislature have not in this statute mentioned *lead-mines*, but only "*coal-mines*," and *expressio unius est exclusio alterius*: there is no reason to think they meant to include them; I think this is confirmed by the act of 31 *Eliz. c. 7. § 5.* against the erecting and maintaining of cottages, which excepts "*cottages for the habitation of workmen and labourers in any mineral works, coal-mines, quarries,*" &c.; so that when they had it in contemplation, they specified them particularly; therefore I am clear, that this act of 43 *Eliz. c. 2.* does not extend to lead-mines. — The *postea* was delivered to the plaintiffs. (a)

An officer of the *Salt-Office* is not liable to be rated to the poor in respect of his salary.
S. C. 4 Burr.
2011, 2012.
Cald. 154. 331.
351. 355.

160. *Rex v. Shalfleet, T. T. 8 G. 3. MSS.* — The case stated, that *J.* the appellant to the rate, inhabits a tenement in the parish of *S.*, and is an officer appointed by His Majesty's Commissioners of the *Salt-Office* for the the purpose of superintending the salt-works carried on in the parish aforesaid; for which he receives a salary of 40*l. per annum*, by monthly payments from the government, and is removable by the Commissioners at pleasure; that the salt-works which he superintends have been and are assessed both to the land-tax and poor's rates, and have constantly paid such assessments; that it appears to the Court of Sessions, that such officers have been assessed, and have paid to the land-tax, but it does not appear that before this time they were ever rated to the poor; and that the said *J.* is rated to the poor the sum of 3*s. 10d.* for his said salary. The Court of Sessions determined, that he was not rateable for his salary, and quashed the rate. — LORD MANSFIELD delivered the opinion of the Court a few days after the agument, viz. This being a case of general and extensive consequence, we took time to consider of it, though I had no doubt upon it. The man is rated for his salary only; for a specific species of property which is not within the words or meaning of the act. Tithes, coal-mines, &c. are within the words of the act, and nothing is within the meaning of these words but personal property, and personal property is the surplus of a man's estate and effects, after payment of debts, the maintenance of his family, and necessary expences. This is not stated to be personal property; but the man is stated to have been rated for a specific thing, his salary only. The earnings of servants, fees of profession might as well be rated. We are therefore of opinion, that this is not such a species of property within the intention of the

(a) See *Rowls v. Gell, post*, pl. 169.

act, as can be rated to the relief of the poor as personal property lying within the parish. — The order of Sessions confirmed; and the rate quashed.

161. *Case of the Governors of St. Bartholomew's Hospital*, T. T. 9 G. 3. — *St. Bartholomew's Hospital* was dissolved in the time of *Henry the Eighth*, who granted in the 30th year of his reign to the mayor, &c. of *London* all the late hospital of *St. B.*, and directed, that it should thereafter be used for the poor; and that all the said hospital should be part of the parish of *St. B. the Less*; and did incorporate the parsonage-house and parish-church of *St. B.* with all tithes, &c. to the mayor, &c. for their own use. After the fire of *London*, several houses and shops were built in the hospital for the convenience of the citizens of *London*, and the inhabitants thereof were then first charged to the poor's rates. In 1790, the old building of the hospital, and some of the said houses and shops, were pulled down, in order for rebuilding the hospital, and there has since been erected an elaboratory, and four large piles of buildings; one of which contains an hall and other rooms and offices necessary for the meeting of the governors, a house for the clerk, and an apartment for the steward; the other three are used for wards for the poor and their nurses only. In 1745, the officers of the hospital were first charged to the poor's rates, which have been paid ever since. In 1757 the fourth pile was erected, and has been charged to, and paid to the poor's rate ever since. In 1766, the quadrangle being completed, the governors pulled down nineteen houses to make an area for the said building. The governors were now charged to the poor's rates the same money for the area which had been paid for those houses: from this rate they now appealed. — BY THE COURT: The governors cannot be considered as the occupiers of any part of the hospital, and as they can be chargeable to the poor in no other capacity, this rate must be quashed. — *YATES J.* Before the 43 *Eliz. c. 2.* no persons could by law be compelled to contribute to the relief of the poor, and persons are now compellable by that statute only, which enacts, that every inhabitant and occupier of lands, &c. shall be taxed. Now a corporation, which is a body in contemplation of law only, which cannot be seen, or do any act but by attorney, cannot be an inhabitant or occupier of lands. (a) The statute, which gives a right to inspect rates, gives it only to inhabitants; none therefore can be charged but those who may be inhabitants. — Rate quashed. (b)

A CORPORATION, as the governors of *St. Bartholomew's Hospital*, cannot be rated to the poor; for the members of it cannot be considered as occupiers.
S. C. 4 Burr. 2435.
Cowp. 83.

(a) 2 Burr. 1053, 1063.
(b) See vide *Rex v. Gardner*, post, pl. 167.

162. *Rex v. Justices of Canterbury*, M. T. 9 G. 3. — SOLICITOR-GENERAL moved for an information against the justices of C., for not rating personal property throughout the town, when it appeared, that they had rated the rectors and vicars for their tithes; and for refusing a special case, to take the opinion of the Court of King's Bench. The only ground upon which it was contended that they were criminal was, that the act of parliament directs personal property to be rated, and they were therefore bound to rate it, and had offended against the law in not doing it. — The information was refused; but LORD MANSFIELD said, To be sure, personal property is within the act of 43 *Eliz. c. 2.*, and yet it is almost impossible to rate it, for it would be compelling persons to discover their debts. — THE OTHER THREE JUDGES declined giving their opinion, whether personal property or stock in trade is rate-

Personal property is rateable within the 43 *Eliz. c. 2.* to the relief of the poor.
S. C. mentioned 4 Burr. 2014. in margin.

able; but all concurred in discharging the rule, but granted a rule for a *mandamus*.

But the property must be visible, liquidated, and ascertained, not casual, fluctuating, and uncertain.
S.C. 4 Burr. 2290.

163. In *H. T. 9 G. 3.* motion for a *mandamus* was made to direct the justices of C. to rate every inhabitant, parson, vicar and others, and every occupier of lands, tenements, tithes impropriate, &c. in the said city and parishes thereof, in equal proportions. The affidavit, on which the motion was made, stated, that there are persons in the city who have personal estates and stock in trade, and many inhabitants who carry on considerable business there, who were not rated; but it did not specify any particular persons, or name any species of business. The rule was therefore discharged. — But YATES J. said, that the general question aimed at in the argument of this case, does not seem to have been decisively determined; but it does not appear here, that the personal estate and stock in trade are clear, liquidated, ascertained personal estate and stock; so that there was not, in his opinion, a proper foundation laid for granting this rule. — ASTON J. thought there was great difficulty and guess-work in taxing personal property and stock in trade; and that it was scarcely practicable to ascertain the true *quantum* of either. No case decides that it is rateable, and probably the 43 *Eliz. c. 2.* did not intend that it should be so. He declared, however, that he gave no direct opinion on this point. — WILLES J. also declared, that he should give no *obiter* opinion about personal property or stock in trade being liable to be rated. Yet he intimated, that long contrary usage ought to go a great way towards overturning any old *dictum* (a); and that if they were liable, they ought at least to be visible, liquidated, and ascertained; not casual, fluctuating, and uncertain. — Lord Mansfield was absent. (b)

(a) 2 Bulst. 354.
Ld. Ray. 1280.
Carth. 464.

The profits of a fair are not liable to be assessed to the relief of the poor. See Caldecot, p. 155. and *Rex v. Rebowe*, post, pl. 166.

164. *Rex v. Brograve*, M. T. 10 G. 3. 4 Burr. 2491. — A rate was made for the relief of the poor of the parish of W., in which the defendant B. was assessed at 160*l.* 3*s.* 9*d.* per annum, whereof 3*l.* 15*s.* is charged for the profits of a fair held once in every year in the said parish. Against this assessment, and for inequality throughout the whole of the rate, B. appealed to the Sessions, and objected that he was rated 3*l.* 15*s.* for the profits of the fair in the said parish (which, upon evidence, appeared to be let by him to one F.,) and also that M., who occupied about seven acres of land as tenant to the appellant, was not rated for such land. The Sessions thereupon ordered the assessment for the profits of the fair to be struck out, and assessed M. for the seven acres of land. A rule was obtained to show cause why this order of Sessions should not be quashed (b), on the ground of inequality in other parts of the rate. But no objection was made as to the profits of the fair not being rateable; and after argument, the rule was discharged, and the order of Sessions affirmed.

(b) See this part of the case ante, pl. 125.

The Court will not determine so general a question as whether all stock in trade

165. *Rex v. Whitney*, E. T. 10 G. 3. — Upon the appeal of D. against a rate made for the relief of the poor of W., the cause of appeal was, For that there were within the said parish many manufacturers of blankets and other traders who employed there many servants and apprentices, and such manufacturers and

(b) Sir James Burrow, in his report of this case, mentions *Rex v. Overseer of Ringwood*, 28 June 1775, "in which," says he, "it seems to be

"very nearly, if not quite settled, that a tradesman is not rateable to the poor-tax for his stock in trade." See *Rex v. Ringwood*, post, pl. 168.

traders were not assessed in the said rate for their stocks in trade. The Sessions being of opinion that *stock in trade* ought in *all cases* to be rated, quashed the rate, subject however to the opinion of the Court of King's Bench on the following facts: There had long been many such manufacturers and traders within the parish, who had been constantly assessed to the *land-tax* for their respective stocks in trade, but none of them ever charged to the relief of the poor, on account of such stock. The said manufacturers and traders, and all other occupiers of lands and houses in the parish, had been and were constantly assessed in this and all former rates for the relief of the poor, as well as to the *land-tax*, for the *lands and houses* in their respective occupations. — LORD MANSFIELD: This matter does not come before the Court in a proper manner. It ought to come on by a complaint of some one who is rated for somewhat which he thinks not rateable. The Court will not give an opinion on every general question which the Sessions may think fit to bring before it. If this Court should determine so vague and general a question, as whether stock in trade be rateable, without any distinctions or enumeration of particulars, it would sow the seeds of dissension all over the kingdom. — ASTON J. The Justices being of opinion that all stock in trade ought to be rated, should have put on the rate each man whom they thought rateable, and should have said, for such stock (particularising it) so much. If such person thought himself aggrieved he might have removed the order by *certiorari*. — WILLES J. I think this state of the case too general. One thing the justices have said in it which cannot be true, viz. that stock in trade ought in all cases to be rated: In some cases it may be rateable, in others not. — BLACKSTONE J. (a) I think this order bad in matter, form, and circumstances. It is no where said, unless it can be taken by implication, that there is any stock in trade in *W*. The Court might infer that a *tradesman* must have stock, but not a *manufacturer*. — The order was quashed.

be or be not rateable to the poor.
S. C. 5 Burr. 2634.
S. C. 2 Bl. Rep. 709.
Cowp. 565.618.
Cald. 149, 150.

Rex v. Ringwood, *post*, pl. 168.

166. *Rex v. Rebowe* (b), *M. T.* 12 G.3. — King Charles granted by patent to *R.* liberty to erect light-houses at *H.*; and, towards the maintenance of them, certain tolls and duties payable by all ships passing or coming into that harbour: in pursuance of this authority, two light-houses were erected, which the defendant claimed under this grant and subsequent letters patent. The duties he received amounted yearly to 1400*l.*, but only part thereof were received at the port of *H.*, the rest at many different parts in the kingdom. The collections were casual, as ships pass by or come into the harbour, and there was no other advantage arising from the light-houses. The defendant occupied these light-houses by two men, kept in his pay to light and attend the fire and lamps from sun-set to sun-rising, who took watch and watch, and had a bed or beds in the larger light-house to lie on

The profits of a light-house are not rateable to the poor.
S. C. Loft. 77.
Cowp. 583.
Cald. 155.351.

(b) See *Rex v. Tynemouth*, *post*, pl. 225.

(a) See the case of *Rex v. Hill*, Cowper, 619. where *Aston J.* is reported to have said, that *Rex v. Whitney* is inaccurately reported in *Bott* in respect to what *Yates J.* is there mentioned to have said. Mr. Blackstone was appointed a Judge of the *Common Pleas* on the death of *Clive J.* in *Hilary Term*, 1770; but previous to the

passing of his patent, *Yates J.* expressed a wish to remove from the *King's Bench* to the *Common Pleas*, to which Mr. Blackstone consented; but on the death of *Yates J.* in the *Easter Vacation* following, Mr. Blackstone was appointed to his original destination, the *Common Pleas*. — See *Pref. to Bl. Rep.* xix.

alternately; and in the day-time clean the two houses, and carry in fuel. R. did not reside in the parish, nor was otherwise an occupier there than as above. He was rated for the light-houses in the same proportion to the land-tax as to the poor's rate. The Sessions was of opinion that he ought to be rated and assessed towards the relief of the poor of St. N. in respect of the said light-houses, and duties collected and paid as aforesaid. — LORD MANSFIELD: They have, properly speaking, rated the fire and the profits arising from the house: the pantheon, play-house, and other places of public amusement are rated, I suppose, but not for their profits. We will, however, consider of it; but it seems to me at present that these duties are not rateable. — LORD MANSFIELD: We took some time to consider the case of *Rebowe*, and are all of opinion, that he ought not to be rated for the tolls. This property is not in the parish. They have not rated the house, but they have rated the tolls. (a) The tolls are not locally situated in the parish, and therefore not rateable there.

A corporation seized of lands in fee for their own profit, are within the meaning of 48 Eliz. c.2. inhabitants or occupiers of such lands; and, in respect thereof, liable in their corporate capacity to be rated to the poor.
Cald. 159. 186.
1 T. R. 68.

(b) See *Rex v. Sculcoates*, ante, pl. 101.

167. *Rex v. Gardner* (b), T. T. 14 G. 3. Cowp. 79. — The substance of the case stated, That G., bursar of *Catharine Hall, Cambridge*, appealed from a poor's rate, whereby he was charged the sum of 2*l.* 16*s.* for 55*l.* per annum. That about the years 1754 and 1755, the masters and fellows of the said college purchased five houses in the parish of St. Botolph, of the annual rent of 55*l.*; and being so seized thereof, pulled them down, and converted the ground upon which they formerly stood, in the first place, towards erecting twelve apartments for the reception of six fellows and six scholars, upon the foundation of Mr. *Ramsden*; that this building adjoined the old college, but had never been inhabited; that another part was taken into the master's garden; that about 140 feet in length of the college walls together with the gates, stood upon another part which was taken into the college court, and inclosed by the walls: a part, between the college walls on the outside and the street, was appropriated towards making an area, and planted with trees for ornament; and on the residue were erected two houses adjoining to each other, one inhabited by the college butler and his family, the other by the college porter, both without the college; the former having no communication with it, but through the latter there was an entrance for the society to come into the college after the gates were shut. That both the butler and the porter had the entire use of their respective houses, without the college intermeddling therewith, and took in lodgers and boarders. That after the houses were pulled down, the rates and taxes of the parish ceased; and from 1761 to 1769 no rates or taxes were paid by the masters and fellows; that the parish then assessed the college to the land-tax at the rate of 55*l.* a year rent for the premises. That the master, &c. paid the same from that time; that at the same time the parish rated them for the premises to the poor-rate for 55*l.* in the same manner as in the rate is set forth. That the said *Gardner* now is,

(a) In a manuscript note of this case in the possession of Mr. *Douglas*, it is expressly stated, that the Court observed, that it was not set forth in the case that *Rebowe* was rated for the house, but only for the tolls: *Dougl.* 118. in note.

Therefore there is probably some inaccuracy in the account given of this case in *Rex v. Wavell*, ante, pl. 112. See too the Report of S. C. in *Lofft*, 77. which agrees with the note in *Douglas*.

and at the same time of making the rates was, bursar of the said college. This Court, therefore, is of opinion, that the said rate of assessment as to all persons named therein (except the said G. for the master and fellows) should be confirmed, and as to the assessment on G., that the same should be amended by striking out the said charge on him, and rating the master and fellows for the said premises, except such part as is taken in for the new buildings for six fellows and the scholars, in the proportion following:—

	£	s.
The Reverend Dr. Prescott, master of the said college, for part of his garden,	1	0
The master and fellows for the house erected for the butler,	4	0
Ditto for ditto for the porter,	3	0
Ditto for ditto for the rest of the premises added to the college court, and for part of an area to the college,	43	15

LORD MANSFIELD: This is a question of great consequence; and the usage under the statute of the 43 Eliz. c. 2. is very material; for great care must be taken to get at certainty in determinations, and to avoid overturning settled practice. It was that consideration which made me ask, how the fact was with regard to corporations? for if corporations have been usually rated all over the kingdom for above a century, there will be little inconvenience in adopting that usage. If on the contrary they have not, it will not be a strong argument in support of the objection that they are not rateable. In the case of *St. Luke's Hospital* (a), I recollect that I put it upon this question, "Was there anybody there who could be rated as occupier?" In that case the difficulty arose from a matter of substance, and not of form; for they could find nobody to rate. There were three sorts of persons only who could be charged as occupiers: 1st, The servants of the hospital; 2dly, The poor madmen who were the objects of the charity; and, 3dly, The trustees. With regard to the first, a clear distinction was taken between them and the officers of other charitable foundations, such as *Chelsea Hospital* (b), who have been held rateable, not as servants of those charities, or as inhabitants of the ordinary lodgings, but as having separate apartments, which were considered in the light of dwelling-houses. 2. As to the poor madmen, there could be no doubt of their not being rateable. 3. The next were the trustees: but it being stated in the case, that they were mere nominal trustees for the poor objects of the charity, they were held, upon that ground, not to be rateable. Upon looking into the note of that case, I find, I observed, that if there were a fourth description of persons who might properly be charged as occupiers, they would not be included in or affected by the judgment the Court was about to give. Then came the case of *St. Bartholomew* (c), and the grounds upon which that case was determined coincide exactly with the reasoning in the case of *St. Luke*. In the case of *St. Bartholomew* it was stated, that *Henry the Eighth*, in the 38th year of his reign, granted all the said hospital to the corporation of London, and directed that it should be for the use of the poor; that after the fire of London several houses were made in the hospital for the benefit of the citizens of London, who were then first

(a) *Ante*, pl. 157.

(b) *Ante*, pl. 154.

(c) *Ante*, pl. 161.

(a) *Ante*, pl. 154.

charged to the poor-rates, as occupiers of those houses; that in the year 1790, some of the ancient buildings, together with some of these houses, were pulled down; that since that time four large piles of buildings had been erected; amongst the rest, one containing a hall for the governors to meet in, &c.; that in 1758, the officers of the hospital were first rated to the poor, owing to the opinion given in the case of *Chelsea Hospital* (a); that in 1776, the quadrangle of the hospital being completed, the governors pulled down eighteen houses to make an area for the benefit of the patients; and for which area the governors were rated: The question was, "Whether the governors were or were not rateable for 'this quadrangle and area?'" From these facts it appeared, that in its origin it was for the benefit of the poor; and though after the fire of *London* houses were built upon the ground for the use of private individuals, who, as occupiers of those houses, were rateable and rated, yet being returned to its original use, the use of the poor, and appropriated as a means of preserving their health, without any profit to the corporation, the Court held, that the governors, who were merely trustees for the poor, ought not to be rated for it. Therefore I am satisfied with my own opinion in saying, that the grounds and reasoning in the two cases of *St. Bartholomew* and *St. Luke* are alike. The principle is this, that by the 43 *Eliz. c. 2.* no man can be rated except as an occupier or inhabitant. Mr. Justice *Yates* indeed started a doubt, whether a corporation could be rated as inhabitants or occupiers; and did say, I believe, what has been mentioned, namely, that a corporation cannot be an inhabitant or occupier. This would have been a great authority, if the opinion had been given with consideration; but it was immediate, without time to reflect on it. But that point was not essential to the decision, and all the Court agreed in the determination of the case upon the other ground. In this case the question is, Whether a corporation seised in fee for their own profit is rateable or not? which is a very different question, and depends upon this point, Whether in law a corporation may not be considered as occupiers or inhabitants? By the statute of 43 *Eliz. c. 2.* all lands and all real property are rateable to the poor, and must have, except in the cases just mentioned, occupiers and inhabitants in consideration of *tax*; therefore, if a man have no tenant, and is seised of lands, &c. in fee, he is said to occupy them himself, or by his bailiff, &c. Most of the old colleges are extraparochial, and upon that ground they are not rateable. (b) But except upon that foundation there has been no instance cited, that a corporation is exempted from this tax; and I can find no authority in point of law which says they cannot be rated. But there are some that go very far to prove the contrary. The first I shall mention, though not the most ancient, is the *Ironmongers' Company v. Naylor* (c), which was a distress for hearth-money: there was no doubt or question in that case, whether as a corporation they were rateable or not; but whether they could properly be said to be occupiers, the houses for which the tax was levied never having been finished. The Court held they were. (d) 2 *Inst.* 703. The authorities (d) show, that corporations are rateable both as inhabitants and as occupiers; and if liable in respect of the repairs of bridges and churches, they are equally so within the purview of the statute 43 *Eliz. c. 2.* The next objection made to this order

(b) See *Cald.* 238.

(c) Reported in
T. Jones, 85.
1 Vent. 311.
3 Keb. 719.
2 Mod. 185.

(d) 2 *Inst.* 703.
1 Jones, 187.

is, that those areas yield no profit; and therefore ought not to be rated. The answer to that is, that the value is in the judgment of the assessors. If lands undergo any alteration, the assessors must take all the circumstances into their consideration, when they are about to fix the value: it would be an absurd rule to say, that lands not covered with houses should pay the same as they did when houses were standing upon them. The rates must be according to the value of the thing to be rated; and the duties increase according to the increase of agriculture or improvement. But it seems a very extraordinary thing for the college to suppose that they are to take in all these lands and pay nothing for them. I do not say what value is to be set upon them, nor will this determination give a sanction to the particular value fixed by the present rate; but they must be of some value; and whatsoever the *quantum* may be, I am of opinion that the college in its corporate capacity is rateable in respect of it. — ASTON J. I concur. The premises in question must be of some value; and as to the *quantum*, it is the province of the overseers to decide, and not the Court. I have no idea but that a *corporation* may be *occupiers*: as such, they may have inspection of the rates; and upon an application to the Court for that purpose, it would be no answer to say, that they are an invisible body; for they may inspect them by their servants, and the Court would punish a refusal by attachment. As to the *remedy* of levying a duty upon a corporation, the books all agree that it can be levied, though they differ in the mode. *Shepherd*, in his Treatise upon Corporations, says, "If a sum of money be to be levied upon a corporation, it may be levied upon the *mayer* or chief magistrate, or upon any person being a member of the corporation." The words are taken from *Stykes*, and are what was said by *Rolle C. J.* in the case of the town of *Colchester*. (a) But the case of the city of *London* (b) concerning the duty of water-bailiage is different, and is thus: "NOTE, It was said, that for a duty or charge upon a corporation, every particular member thereof is not liable; but process ought to go in their public capacity." And this is the right law. In *Thursfield v. Jones* (c), the corporation were cited, not by their proper names, but in their *politic* capacity; and the Court said, "If the company had neither land nor goods, there was no way to make them appear: but if they stood out, then they must lie by the heels in their natural capacity." Therefore, the idea that a corporation is not liable to be rated, nor amenable by process in respect of a rate, is not well founded. By a late act, 17 G. 2. c. 38., the remedy of distress is extended beyond the particular parish into other precincts, and even into other counties; so that their property is answerable, though they cannot personally be punished. Therefore I am clearly of opinion, that as a corporation they are liable to be rated, and that the order of Sessions is good: though, in respect of the *quantum*, an appeal is still open, if the college think themselves aggrieved. — WILLES and ASHHURST Js. concurred. — The rate quashed so far as the same related to the porter and butler, and affirmed as to the rest and residue.

(a) *Sty. Rep.*
567.

(b) 1 Vent. 351.

(c) *Skin. 27.*

168. *Rex v. Ringwood*, T. T. 15 G. 3. *Cowp.* 326. — A poor's rate was made, which, on appeal, the Sessions quashed, stating, that it appeared to them, that A, B, and C were possessed, as co-partners of *stock* in the trade and business of common brewers and

The stock in trade of common brewers cannot be sufficiently ascer-

tained, to be rated to the relief of the poor.

malsters, in the parish of R., to the value of 4000l.; for no part of which the said copartners, or either of them, were or was, in the said rate, assessed to the relief of the poor of the said parish: that the said A, B, and C were all, at the time of making the said rate, and still are, *inhabitants* of the parish of R.: and it doth not appear to this Court, that *stock in trade* hath *ever before been rated in the said parish*. — LORD MANSFIELD: The Court are not obliged to give an opinion upon every general question which the Sessions may think fit to bring before it. In general, I believe, neither here nor in any other part of the kingdom is personal property taxed to the poor. The justices at Sessions should have amended the rate, if they thought this property rateable; and then on attempting to do it, they would have discovered the wisdom of conforming to the practice, which they expressly state in the case, of not rating it. If they had tried to have amended it, how would they have rated this stock? Are the hops, and the malt, and the boiler, to be rated at so much for each? or, Is the trader to be rated for the gross sum which his whole stock would sell for? If the justices had considered, they would have found out the sense of not rating it at all; especially when it appears that mankind has, as it were, with one universal consent, refrained from rating it; the difficulties attending it are too great, and so the justices should have found them. As to the authorities which have been cited, they are very loose indeed; and even if they were less so, one would not pay them much deference, especially as they differ; and the rules they lay down have not been carried into execution for upwards of one hundred years. They talk of *visible property*; What is visible property? I confess I do not know what is meant by visible property. If every visible thing should be determined to come under that description, in that case a lease for years, a watch in a man's pocket, would be rateable. Visible property is something local in the place where a man inhabits. But that does not decide what a man's personal property is. Consider how many tradesmen depend upon *ostensible* property only. As to the case in Lord Raymond (a), the only question submitted to the Court was, Whether the stock of a *farmer* was rateable to the poor? and they held it was not. But according to the report, they go on and say, the *stock* of an *artificer* is rateable: they had no case before them as to that point, therefore the judgment upon that question is extrajudicial. But supposing it were not, What do they mean by the visible stock of an artificer? Some artificers have a considerable stock in trade; some have only a little; others none at all. Shall the tools of a carpenter be called his stock in trade, and as such be rated? A tailor has no stock in trade; a butcher has none; a shoemaker has a great deal. Shall the tailor, whose profit is considerably greater than that of the shoemaker, be untaxed, and the shoemaker taxed? — Under the land-tax act in *London*, to avoid inconveniences, they tax the house in which a person lives at a certain sum, by guess: and to avoid discovering a man's stock, they tax it at random: insomuch that I have known a house occupied by a physician taxed the same as when a merchant had it. — ASTON J. There has been no decision that personal property is rateable: all the opinions upon the subject are only *dicta* of Judges. Lord Hale says, the *usage* has been *against* rating personal property,

(a) *Rex v. Barking, ante*, pl. 145.

and that the inconveniences attending it would be very great. In *R.* it never has been rated. If the justices had amended the rate as they ought to have done, they would, in the attempt to make a better rate, have found the difficulty of rating personal property. — WILLES and ASHHURST Js. were of the same opinion, and the order of Sessions was quashed, because the justices had quashed the rate, instead of amending it.

§ 69. *Rowls v. Gells (a)*, *E. T.* 16 G. 3. *Cowp.* 451. — The plaintiff *R.*, in consideration of 1560*l.* paid to His Majesty as a fine, was admitted tenant for thirty-one years of “all those mines of lead, with their appurtenances, within the soke and wapentake of *W.*, with the *lot* and *cope* within the said soke and wapentake, under the yearly rent of 144*l.*” He was assessed to the poor of the township of *W.* under a monthly rate, in the words and figures following: “*R.* for *lot* and *cope* at 500*l.* per annum, 13*l.* 10*s.*” The duty of *lot*, payable to the plaintiff as lessee of the crown, is the *thirteenth dish* or measure of *lead ore* got, *dressed*, and made *merchantable*, at all the lead mines within the said soke or wapentake of *W.* *Cope* is 6*d.* for every load or nine dishes of lead ore raised at such mines. The township of *W.* is part of, and within the soke or wapentake. The said duties of *lot* and *cope* are paid to and received by the plaintiff, as lessee of the crown, without any risk or expence in working the mines. In the year 1775, the said duties amounted to the clear sum of 500*l.*, but they are *uncertain*, and *vary* every year. All the king’s subjects have a right to dig for and get lead ore within the said wapentake of *W.*, paying the lord’s duties, and conforming to the mineral customs used within the said soke and wapentake; and the miners or proprietors of such mines, within the said soke and wapentake, are entitled to a privilege of using seven yards and a quarter of land in breadth, adjoining on each side of the mine or vein, so far as the mine or vein extends in length, for the purpose of working the mine, which is called “*quarter cord*,” and His Majesty, or his lessee, is also entitled to a *mere* of ground, being twenty-nine yards in length in every new vein, with the like privilege of quarter cord on each side his mere. Great quantities of land within the soke or wapentake of *W.*, are annually rendered of little or no value by working the mines. In the said soke or wapentake of *W.*, the said duties had not been assessed to the poor until the present rate; but in the township of *H.*, in the hundred of *High Peak*, which adjoins the said soke or wapentake, his Grace the Duke of Devonshire had been assessed and paid to the poor’s rate there for the like duties, for about forty years last past. The miners or proprietors of lead mines in the county of *Derby* had not been rated to the relief of the poor in respect of their said mines there. THE QUESTION WAS, Whether under the circumstances of this case, the plaintiff was liable, in respect of the said duties, to be assessed to the poor’s rate for the township of *W.*? — LORD MANSFIELD now delivered the opinion of the Court as follows: The poor’s rate is not a tax on the land, but a personal charge in respect of the land. The present is a personal charge by reason of the annual profits which the lessee of the Crown receives out of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and not the landlord, is liable to this tax; for it arises by

The lessee (under the Crown) of lead-mines is rateable to the poor for the profits arising from *lot* and *cope*, which are duties paid him by the adventurer, without any risk on his part.

S. C. cited Dougl. 304. notes.

(a) See *Rex v. Brown*, *post*, pl. 290. *Rex v. Bishop of Rochester*, *post*, pl. 227. *Rex v. Baptist Mill Company*, *post*, pl. 232. *Rex v. Earl Pomfret*, *post*, pl. 236.

See the Smelting Company v. Richardson, ante, pl. 159.

See Rex v. Vandewall, ante, pl. 156.

reason of the land in the parish; and the landlord is never assessed for his rent; because that would be a double assessment, as his lessee has paid before. *Lead mines* are not within the statute 43 *Elix. c. 2*. They are in themselves uncertain, and may prove unsuccessful to the adventurers. Taxes, therefore, upon the adventurers would be hard, and they are excused. But the person, lord or landlord, who, in case they do prove of value, receives a stipulated benefit from the profits or value of them, is not excusable upon the same ground, and therefore is expressly charged to the *land-tax*, as that falls upon the landlord. He is alike liable to the *poor's rate*, for his visible real property in the parish; though where the poor's tax is a charge on the lessee, the landlord does not pay in respect of his rent. Where the adventurer or lessee of the mine pays nothing, it is no double tax in any light; because the lord pays, not for that, which the *lessee* or adventurer is excused from paying for, but the lord pays for his own. It is not a mere casual profit, but an annual revenue, if any, and very different from the casual profits of a manor, which are not annual, for there may be none for years. But if the mine produce profit to the miner, the lord's share is certain, annual, and an annual rent is paid for it constantly. The miner is obliged to pay certain proportions to the owner of the land. What reason then is there to exempt these proportionable revenues? It makes no difference to the adventurer; it does not prejudice or benefit him. But as such obligatory payment is in respect of the land, the land-owner ought not to receive it clearer or neater than any other part of his estate, when he is at no trouble, expence, or possible risk. Therefore we are all of opinion, that the plaintiff is liable to be rated for this property:

The Royal Palaces are not rateable to the poor; but servants occupying separately houses and land, whether they pay for them by rent or service, are rateable. Cald. 153.

170. *Rex v. Mathews*, H. T. 17 G. 3. *Caldecot*, 1. — The case stated, That the appellant M. is rated for a keeper's lodge, and two acres of land situate in *Windsor Great Park*, in the parish of *Old Windsor*; that the great park, with all the lodges belonging thereto, is the property of His Majesty; that by his letters patent bearing date the 11th day of *July*, in the sixth year of his reign, His Majesty gave and granted the office of ranger or keeper of his said park, with all the lands, grounds, and soil within the same, lodges, and privileges thereto belonging, to his brother Prince *Henry Frederick*, or his assigns, during His Majesty's pleasure, who by virtue of such office occupies the great lodge and park, appoints the other keepers thereof; that *Mathews*, the appellant, is one of the keepers of the park, appointed by his Royal Highness during pleasure; that the appellant, by virtue of his office, occupies the lodge, and the two acres of land for which he is so rated; that the lodges and park have not been rated to the relief of the poor till about two years ago; that J., another keeper and occupier of one of the lodges in the park, and within the parish, having been rated about two years for his lodge, and having refused to pay the rate, a warrant of distress was issued, bearing date the 27th day of *November* last past, and in consequence thereof a distress was made, and his goods sold in the regular course of law, and the overplus returned to him; against which proceeding he has not appealed; that His Majesty is rated to the poor's rate for the *Mews* in the parish of *New Windsor*, and that the same is paid by the Master of the Horse to His Majesty; and that His

Majesty is rated for the *Mews* in the parish of *St. Martin* in the city of *Westminster*; that *Richard Biggs*, who is clerk of the works at *New Windsor*, and occupies a house there belonging to His Majesty by virtue of that office, has for many years been rated and pays to the poor rate of *New Windsor* for the same; that the occupiers of a house in the parish of *New Windsor*, belonging to the Crown, and at present in the occupation of *Robert Blunt*, Esquire, have been rated, and have paid to the poor rate of the parish for twenty years past; that *Thomas Tilsley*, an officer under the Crown at *New Windsor*, and occupier, by virtue of his office, of a house in the *Castle Hill* belonging to the Crown, and within the parish of *New Windsor*, has for many years been rated, and has paid for the house to the poor-rates; that *Tilsley's* predecessor in the office was also rated, and paid to the poor-rates there for the house; that the following officers or servants of the Crown, at *Hampton Court*, in the parish of *Hampton*, in the county of *Middlesex*, who are occupiers, by virtue of their respective offices, of houses and lands there belonging to the Crown, have been regularly rated and have paid to the poor-rates of the parish of *Hampton*; particularly *Mrs. Mostyn*, wardrobe-keeper at *Hampton Court* aforesaid, for a meadow belonging to her apartment in the Royal Palace and annexed thereto; *Mr. Rice*, clerk of the Board of Works, for the house he occupies there; *Mr. Shaw* and *Mr. Snape*, farriers to His Majesty, for the estates in their occupation; *Sir William Chambers*, Comptroller of the Board of Works, for his house which he occupies by virtue of his office: that *Lord North* is rated for *Bushy park* and lodge belonging to the Crown, situate in the parish of *Hampton*, which he occupies in right of his wife, who is ranger of the park; that the rates have been regularly paid for the same both by him and by the late *Lord Halifax* when ranger of the park; that *General Hodgson*, who is occupier of *New Lodge*, and certain lands thereto annexed in *Windsor Forest*, in the parish of *Bray*, the lodge and lands being the property of the Crown, has been rated and paid to the poor-rates of *Bray* parish for the woods and lands; that many servants have gained their settlements in *Old Windsor* parish by their service at the appellant's lodge and the other lodges; many of whom, with their families, have been and are chargeable to the parish of *Old Windsor*; and that the parish officers have lately paid 22*l.* and upwards on account of a pauper who gained her settlement by service with *Mr. Fairfax*, the person who immediately preceded *Samuel Mathews*, the appellant, in the occupation of the lodge for which the appellant is now rated. — LORD MANSFIELD: The question is, Whether this property is rateable? The Royal Palaces are not liable, neither have they ever been rated. As to the *Mews* in *St. Martin's* parish, that part of it only is rated which was taken in of late years, and was before that time ground belonging to some adjacent parish. (a) But as to the point made before THE COURT, it is clear, that when a servant occupies a house and two acres of land, whether he pay for them by a rent or by service, it can make no

(a) So in the case of *Catharine Hall*, which, though extraparochial, as most of the old colleges are, was holden liable for lands newly taken in. *Rex v. Gardner*, ante, pl. 167.

difference as to his being rated; he is equally liable. — *ASTON, WILLES, and ASHHURST J.*s. concurring, the rate was affirmed.

Personal property, to be capable of being rated to the relief of the poor, must be local, visible property within the parish.

2 Bl. Rep. 709.

5 Burr. 2634.

Cowp. 618.

Cald. 150.

171. *Rex v. Andover*, H. T. 17 G. 3. Cowp. 550. — The order stated, that *W.* is the proprietor of stock in trade as a draper in the parish of *A.* to the amount of three hundred pounds, and that the profits of such his trade are fifteen pounds *per annum*; and that he ought to be rated towards the relief of the poor of the parish of *A.*, in respect of such stock and profits, sevenpence each rate in the rate appealed against. It then set forth an adjudication of the stock in trade and profits of six other persons in like manner, and how much each was to be rated in respect thereof. — LORD MANSFIELD: It is a very different question, whether personal estate is to be rated to the extent in which it has been argued to-day (*a*), or not to be rated at all in any shape, or under any circumstances. It would make the poor laws very oppressive, if a man is to be taxed to the extent of his whole personal estate and income. In that case, every man who has money in the funds would be liable; lawyers for their fees, soldiers for their pay, &c. But where men are occupiers of houses, and have stock in trade, Whether such stock in trade may be taken into consideration? is a very different question. Some personal estate may be rateable, but it must be *local visible property within the parish*. The general question is too extravagant. It would be material to state what has been the custom of rating. If the usage should be to take in stock in trade, there would be very good right to support it. (*b*) — *ASTON J.* From the case of *Sir Anthony Earby* (*c*), there are a great many cases which say that the local visible property may be rated; but the question is, How it must be done? Suppose it were done by the overseers in the manner done here, if notice is given to the several persons rated, and they think themselves over-rated, they have an appeal to the Sessions. So if a house has been usually rated for the house and stock in trade all together, the rate is so specified: and if the person has an objection because he is mounted too high, on an appeal, all that is a matter to be laid before the justices at Sessions, who act as jurymen with respect to the fact, and judges as to the decision. Then the immediate point specified in the appeal is produced. For, notwithstanding the usage, if upon the general question, which is what they are now aiming at, it should turn out to be the law that personal property is rateable, if that is the law, it must be rated then, though it never was so before. I should think, if the fact was fairly stated on an appeal, personal property, if by law rateable, might be called upon notwithstanding the usage.

(*b*) Vide *Rex v. Hill*, *post*, pl. 178.

(*c*) *Ante*, pl. 136.

The grantee of the right of navigation of the river *Ouze* between *Eritk* and *Bedford* is rateable to the poor of the parish of *Cardington* in

172. *Rex v. Cardington* (*d*), E. T. 17 G. 3. Cowp. 581. — *A. P.*, by virtue of letters patent, an act of parliament, and other legal conveyances, was seised in fee of the right of navigation of that part of the river *Ouze* which lies between *Eritk* and the town of *Bedford*; and of all the tolls, sums of money, and advantages arising and becoming payable for the carriage of coals and all other commodities whatsoever upon that part of the navigation.

(*a*) See Mr. Burrough's argument at length, Cowp. 551—564, where every preceding case upon the subject is adduced.

(*d*) See *Rex v. Nicholson*, *ante*, pl. 102. *Rex v. Calder, &c.* Navigation, *post*, pl. 239.

This part of the river was made navigable for the public benefit, by the undertakers and proprietors from whom *P.* claims, at a great expence, and is still attended with considerable charges. By virtue of the said letters patent and act of parliament, the proprietors are empowered to take and receive certain tolls for the carriage of coals and other goods, and to erect certain sluices and staunches for the better keeping up the water and carrying on the navigation; and the said tolls were paid for passing through every sluice, and in a different rate for different sluices. Several sluices had been long erected on the navigation, and in particular one sluice across the said river in the parish of *C.* in the county of Bedford, at which the toll was three pence a chaldron or load weight. *P.* did not reside in the parish of *C.*, nor had he any person resident at that sluice to receive the tolls; but the tolls for that sluice were received at Barford or Eaton, and the boatmen draw the wicket to pass. Neither *P.*, nor any of the former proprietors of this navigation, were assessed to the poor's rates for their sluices, or for the tolls or profits, though it had been navigable, and the tolls received, for upwards of an hundred years; but they had been for many years assessed to *C.* land-tax, and paid the following annual sums; 5*l.* 13*s.* 6*d.* when the land-tax was four shillings in the pound, and 3*l.* 18*s.* 4*d.* when three shillings in the pound. The parish of *C.* assessed *P.* to the poor's rates for the said sluices in the sum of seven shillings and sevenpence halfpenny, being a rate at three pence in the pound.—THE COURT ordered the case to stand over, that inquiry might be made as to the custom of rating this description of property in other places; and it appeared that out of fourteen sluices, being the whole number erected upon this navigation, one only was rated to the poor; and that the river Ivel near Bury, the Northampton river, the Lark, the Ouze, and the Stower, were none of them taxed. But it also appeared that the tolls at Marlow, Oxford, Reading, and several others on the river Thames, were all rated to the poor: and THE COURT, upon the whole, thought these tolls were rateable; and affirmed the rate.

respect of the tolls arising from a sluice erected there, though he himself resided elsewhere, and the tolls are collected in another parish.

173. *Rex v. Hill*, T. T. 17 G. 3. Cowp. 613. — *F. H.* for some years past had been an inhabitant of *B.*, where many other tradesmen, particularly clothiers and manufacturers of woollen goods, likewise lived. He there carried on the business of a clothier, and at the time of making the rate in question was actually possessed of a considerable stock in such his trade within the parish. He was charged a penny as his share or contribution towards the relief of the poor of the said parish for the year 1775, in respect of his stock in the said clothing trade, which he then had in the said parish; and which charge of a penny was proved to be no more than his just proportion or share towards the said rate, if, in respect of such his said stock in trade, he was legally bound to contribute any thing towards the relief of the poor of the parish. The Sessions also stated that it had been the usage heretofore in the parish of *B.*, to rate persons there for their stock in trade.—THE COURT confirmed the rate.

Where it has been the usage in a parish to rate persons to the poor for their stock in trade within the parish, such persons are liable under 43 Elix. c. 2. to be rated to the poor in respect thereof. See Cald. 150.

174. *Rex v. Miller (a)*, T. T. 17 G. 3. Cowp. 619. — *S.* demised to *M.* of *C.* certain lands containing about four acres, with build-

A person renting a quantity of land, to-

(a) See *Rex v. New River Company*, post, pl. 231.

gether with a mineral spring thereout arising, at a gross yearly rent, is rateable to the poor in respect of the whole of such rent; though in fact the annual value of the land, independent of the spring, is only in proportion of two to eight of the reserved rent. Cald. 155. Cowp. 451. Vide *Rex v. St. Nicholas, Gloucester, post*, pl. 180.

ings thereon, and a certain well of mineral water thereout arising, called the *C. Spa*, for the term of twenty-one years, determinable at the option of the lessee at seven, fourteen, or one-and-twenty years, at the yearly rent of one hundred pounds. The lands and buildings independent of the well, were of the annual value of about twenty pounds. The rent paid by *M.* for the mineral water of the well was eighty pounds. The profits of this mineral-water to *M.* arose from the sale thereof and the company resorting thereto, which is very various and uncertain; *M.* stood rated for the premises in the rate at the sum of 5*l.* which is equal to a rate of 100*l.* per annum for lands in the parish. — LORD MANSFIELD: Nothing can be plainer than the present case. This is not a rate upon the profits of the well, but upon four acres of land, let to the defendant at 100*l.* a year; and the value arises partly from the buildings, and partly from the spring that produces the mineral-water; therefore the profits of the spring are part of the produce of the land. In *Worcestershire and Cheshire*, where there are salt springs, the rent of the land is increased considerably on that account: so here, the consideration of the well increases the rent: it is part of the produce of the land; and therefore, as such, I am clearly of opinion it ought to be rated. — ASTON J. I am of the same opinion. The rate, in this case, is upon the whole estate, let at 100*l.* a year. It is true, the justices, in the case stated, have divided the rent, and specially distinguished between the annual value of the land and the profits of the spring; but the lessor and lessee have made no such distinction in the lease, and the rate is upon the whole rent in gross.

A sum of money made payable annually by the owners of land in lieu of tithes is liable to the poor's rate.

175. *Lowndes v. Horne*, H. T. 19 G. 3. 2 Bl. Rep. 1252. — By an inclosure act passed in the 12 G. 3. it was *inter alia* enacted, "That an allotment of common field land be made to the rector of *N. C.*, in lieu of the tithes issuing out of the old inclosures in the parish; or where the owners of such old inclosures had none, or not sufficient land in the common fields to make such allotment, they should pay such annual sum to the rector as the commissioners should award, with power for the rector to distrain for the same; and to sell the distress, in such manner as landlords are by law authorized to distrain for rent and to sell the distress, rendering the overplus," &c. The commissioners awarded that the several owners of lands, specified in a schedule annexed, should pay to the rector for the time being annually the respective sums therein mentioned, amounting in the whole to 42*l.* 15*s.* 4½*d.* The question was, Whether the rector was liable to be rated to the poor in respect of such annual payments? It was said, that this was a mere rent issuing out of the old inclosures, as appears from the clause of distress, and therefore not assessable. — But on the other side it was insisted, that it was a composition for tithes, which is as much assessable as the tithes themselves would have been. (a) — DE GREY C. J. Nothing can be clearer than the law upon this case. This is a sum of money payable in lieu of the tithes of the old inclosures, on account of the inability of the owners to furnish land sufficient to make an allotment. The tithes were before subject to the poor's rate, and so would have been the allotments if made. Why then, in point of justice, should this sum of money stand excused? It is said to be a rent; but the act has industriously avoided calling it by that name: it is a mere compo-

(a) *Ante*, pl. 147.

sition for tithes; and the superadding a power of distress does not turn it into a *rent*, but rather proves the contrary; for if it were a *rent*, the distress would be incident to it, without any special provision in the act. — BLACKSTONE J. I do not know that it has ever been determined that *no rents* are assessable to the poor.

Rez. v. Vandevall (a) extends only to *quit-rents* of a manor. But, (a) *Ante*, pl. 156.

admitting it to be so, this is clearly no *rent*, but a parliamentary *modus* or composition for tithes, for which the parson is liable to the poor's rate, as was determined in *Regina v. Bartlett* (b), and

(b) *Ante*, pl.

Rez. v. Lambeth. (c) The act does not say it shall issue out of the lands; but that in lieu of the tithes issuing out of the lands the

148. (a)

owner shall pay a *sum of money*, and superadds a power of distress by way of remedy. The land-owner, who pays this sum, is entitled to a rateable abatement for himself or tenant out of the poor's rate, in like manner as if he annually compounded for his tithes. —

(c) *Ante*, pl. 149.

NARES J. of the same opinion. A pension payable to the parson would be liable to the poor's rate. (d)

176. *Jones v. Maunsell*, M. T. 20 G. 3. Dougl. 302. — The question on a motion for a new trial was, Whether *J.* was rateable in respect of the *herbage and pannage* of part of *R. Forest*, called the *Lawn of B.*? — THE COURT directed inquiries to be made on both sides, whether there was any instance of such property being rated in any part of the kingdom; but the result was, that no instance could be found; and there being a difference of opinion in the Court, the cause stood over for judgment till this day. — LORD

It is not settled whether the *herbage and pannage* of a forest are rateable to the poor. Cald. 155. 138. See *Ld. Bute v. Grindall*, *post*, pl. 185.

MANFIELD: The question is, Whether the *herbage and pannage* of the *Lawn*, part of *R. Forest*, is a species of property rateable to the poor? The plaintiff's interest was as occupier under *H.*, but whether as tenant, manager, or servant, did not fully appear; but it did appear that he was a person in the visible occupation of the property. *H.*'s title was under a grant from Queen *Elizabeth* to Sir *C. H.*, of the office of keeper of the *Lawn* and deer, and of the *herbage and pannage*. In the 4th institute, *herbage and pannage* is thus explained: "He that hath the *herbage* or *pannage* of a park by the grant or demise of the king, or any other, cannot take any

"*herbage* or *pannage* but of surplussage, over and above the competent and sufficient pasture and feeding of the game; and if the owner of the game suffer the game so to increase as there is no surplussage, then he that hath the *herbage* and *pannage* cannot

"put any beasts in the park." The same definition is adopted by Sir Francis North in his argument in the case of *Potter v. North*. (e)

(e) 1 Ventr. 383. 391.

The form of the assessment was "on the lodge and *Lawn*;" but there was no question on any thing but the *herbage and pannage*. The cause was first tried before Blackstone J., and he inclined to think that the property was not rateable; but the jury found for the defendant. It then came on here, on a motion for a new trial, when the Court directed a new trial, on the single question, Whether rateable or not? On the second trial, Ashhurst J. delivered it as his opinion to the jury, that the property was not rateable; and they found for the plaintiff. Another motion for a new trial has been made, and the question fully argued at the bar. Since the argument, there have been considerable doubts in the Court, which have been the occasion that the case has stood over till now.

(d) Powell v. Bull, Ld. King's MSS. Rep. in M. T. 4 G. 1.

We have long been agreed upon two propositions, viz. **FIRST**, That the uncertainty of the value is not material; *that* merely affects the quantity of the rate. **SECONDLY**, That whether the herbage and pannage is enjoyed by the grantee in fee, or by a tenant for life, years, or from year to year, or by a keeper or servant, is not material; if the property be rateable, any of those sorts of occupiers are. These two propositions lay out of the case all the particular circumstances concerning the nature of the plaintiff's occupation, and bring it to the simple question of law. Upon this we have been long divided; and we have consulted some of the other judges, but without satisfaction. The arguments against the rateability were, that the owner or grantee of the forest might destroy the property entirely, by increasing the number of the deer. Such grantee would be rateable to the full value of the whole; for the forest is only exempted from the poor rate while in the hands of the crown. (a) By disafforesting, the herbage and pannage might be extinguished: it is a species of property which does not lie in occupancy; and trespass or ejectment will not lie for it. There is no instance where it has been rated, though there is a great deal of this sort of property in the kingdom. The authorities cited on this side were, *Holden v. Smallbroke* (b), *Suckerman v. Warner* (c), *Herbert v. Laughlin* (d), and *Pimble v. Sterne*. (e)

(a) Vide *ante*,
pl. 149 and 164.

(b) Vaugh. 188.

(c) 2 Bulst. 249.

(d) Cro. Car.
492.

(e) 1 Lev. 213.

(g) *Ante*, pl. 169.

(h) B. R. H.
4 Jac. 1. Com-
myn v. Kincto.

(i) Corporation
of Wickham v.
The Mayor,
ante, pl. 140.

On the other side of the question, the consequence from the cases concerning occupancy was denied; for, though this property might not lie in occupancy, according to the strict common law sense of the word, it might be occupied within the meaning of the statute of *Eliz.*: if so, the usage would not alter the question. The case of *Rowls v. Gell* (g) was much relied on; but it did not convince, because there the profits arose from the ownership of the soil (whereas *herbage and pannage* is only a privilege), and an ejectment will lie for a mine. *Cro. Jac.* 150. (h) Another case, in *Keble*, was more material (i); that case goes to show, that *tolls* are rateable, and *they* do not lie in occupancy, according to the legal definition, nor can they be the subject of an ejectment. The authority of that case, however, was much doubted: it is a loose note, by a bad reporter, of a rule to show cause; and it does not appear that cause was ever shown. But the case was so apposite, that, in the last vacation, I got an inquiry made in the country to which it relates, and I found that the toll there mentioned has been rated as far back as memory goes. (k) This confirms the note in *Keble* very much, and shakes the opinion against the rateability. The question is of great consequence, and affects many persons; and therefore we are all of opinion that there should be a new trial, in order that the parties may have an opportunity of having the point settled upon a special verdict in the most solemn manner known to the constitution. — The rule made absolute.

The parochial
assessments for
the vicar of St.

177. *Rex v. Toms*, E. T. 20 G. 3. *Dougl.* 401. — By a private act of parliament, 4 & 5 P. & M. c. 5. it was enacted, that the citizens

(k) The toll of *Putney* bridge is regularly rated in *Putney* parish, and also in *Fulham*, being valued at the same sum (700*l.* a year) in each. There are collectors at each end. At first there

was none at the *Putney* end, and then the bridge was not assessed in *Putney*. — See the case of *Rex v. The Undertakers of the Aire and Calder Navigations*, *ante*, pl. 89.

and inhabitants of *C.*, should pay their *tithes* to the vicar of the parish of *St. M.*, and to the vicar of the parish of *The Trinity* within the said city, in the mode and at the times described by the act, giving to any party grieved an appeal to the mayor; and if he did not determine within a month after complaint, then the lord chancellor, on complaint made to him, is authorised to make such final order as to him should seem meet. This act was never enforced from the time of its passing until the year 1776, when *R.*, vicar of the parish of *The Trinity*, enforced it against one *G.*, one of the inhabitants of that parish, by an application to the chancellor, who made an order on *G.* for the payment of so much for his tithes; but on his refusing to comply, it appeared that the act had made no provision to enforce compliance. *R.* therefore brought an action on this order; but the proceedings were stayed on a point of *form*. (a) The two vicars applied to parliament, and the 19 G. 3. c. 57. was made with respect to the parish of *The Trinity*, and the 19 G. 3. c. 60. with respect to the parish of *St. M.*; by which a new mode of rating, and a more easy method of enforcing payment, were established. The 19 G. 3. c. 60. relative to *St. M.*'s recited, that the vicar and the inhabitants had come to an agreement to raise by a rate certain sums of money, to be paid to the vicars for the time being, in lieu of the said ancient rates and payments, and of all rights claimed under the statute of *P. & M.*; and then enacts, that all the ancient rates shall cease and be repealed, and substitutes a new rate and assessment "in lieu and full discharge of all ancient payments, *Easter offerings, tithes*, and "other ecclesiastical dues, claims, and demands whatsoever, except surplice fees," &c.; the rate to be made by the assessors, one half appointed by the vicar, and the other by the inhabitants; and the payment to be enforced by distress and sale. By sect. 28. an option is given to the parish officers to raise yearly by a pound-rate, made by them in the proportions prescribed by the act, any sum not exceeding 300*l.* nor less than 280*l.* and to pay the same to the vicar by equal quarterly payments, "clear of all taxes, deductions, charges, and extras whatsoever, *parochial*, parliamentary, or otherwise howsoever; which said sum is to be in full satisfaction of all the vicars claims under this act;" and in such case, during such payment by the parish officers, the power of appointing assessors is to cease. The overseers of *St. M.* rated *T.*, vicar of the said parish, for his parliamentary payments under this statute in lieu of tithes, and the Sessions confirmed this rate.—**LORD MANSFIELD:** This is in the nature of a private act of parliament, where the legislature only lends its aid to the agreement of the parties, in order to render it effectual, when any public reason stands in the way. The payments established by the act of *Philip & Mary* were not rateable under the 43 *Eliz.*; they were in the nature of rents for houses, which are not rateable. Those payments, if enforced, would have been double what has been substituted in their place; but, on the other hand, the remedy by application to the summary jurisdiction given to the chancellor and the two chief justices, was very inconvenient to the vicar. Upon this the parishioners and vicar of *St. Michael's* came to an agreement. For what? Not that the new payments should be made liable to a duty to which those which they were substituted for were not liable. The agreement was, that the vicar should

Michael's in *Conventry*, established by 19 G. 3. c. 60. are not rateable to the poor. *Sed quære*, and see the case of *Rann v. Picking*, *post*, pl. 179.

(a) See Cowper, 474. Dougl. 402.

See the case of *Rann v. Picking*, *post*, pl. 179.

receive to a *less* amount, but *more easily*. If the sum shall amount to 280*l.* the vicar is to receive that sum clear of all *parochial* and other deductions, provided the parish choose to take the collection of the rate upon themselves. This they certainly will do, whenever it is likely to exceed the 280*l.* The vicar will only have the collection to make when it falls under that sum. Is it possible that it could be intended, that when he received *less* than 280*l.* it shall *not* be free from all deductions? I am clear that the true meaning of the act is, that this property shall not be rateable to the poor. — WILLES and ASHHURST Js. of the same opinion. — BULLER J. absent. — The order of Sessions and the rate were quashed. (a)

An uninterrupted usage under 43 Eliz. c.2. of rating stock in trade within a parish, establishes that the holders of this property are liable to be assessed for it in such parish.

178. *Rex v. Rodd*, H. T. 22 G. 3. Cald. 147. — The Sessions stated the following case: That within the borough of B. it had been usual and customary, from the 43 Eliz., and ever since the existence of rates for the relief of the poor, to rate and assess the inhabitants of the said borough, and amongst them such as had been of the same trade and in similar circumstances with the appellant, R., for and in respect of their personal property or stock in trade in the said borough, towards the relief of the poor of the said borough and parish; that such inhabitants so rated and assessed for their personal property or stock in trade only, as well as other inhabitants of the said borough, rated thereto in respect of real property, had a right to vote, and had constantly voted as inhabitants of the borough, paying scot and lot in all elections of members to serve in parliament for the said borough: That R. for many years before, and at the time of making the rate, was an inhabitant and substantial householder within the borough, and a butcher, and kept an open butcher's shop therein, carrying on his said trade of a butcher, by purchasing whilst living, and killing and selling dead, within the said borough, about the quantity of one ox or heifer, and two calves, and two sheep or lambs weekly, one week with another, throughout the whole year; that he paid about twenty pounds every week in the purchase of such ox or heifer, calves, sheep, and lambs; that though he actually laid out the said sum of twenty pounds or more every week in buying such live cattle, yet as he received the ready money and the profits in trade thereupon back again in the course of the same week, or soon after by the sale thereof dead, it is but about one twenty pounds employed in the whole year, which he so turns in his said trade every week; he buying and paying for the said live cattle, killing the same soon after, and in his said shop, within the said borough, visibly and openly exposing to sale, and selling the meat in small pieces; and also the tallow, skins, hides, and other produce thereof; whereby he received a return of the money for the same, with the profits thereupon, in the course of the same week, or soon after, as aforesaid; and by and out of the profits arising

(a) In T. T. 22 G. 3. the rateability of the new payments in the parish of *The Trinity* came in question upon a special verdict, in the case of *Rann v. Picking* and others, when the Court declared, that the ground of the decision in *Rex v. Toms* was the agreement and optional clause; and as the act re-

lative to *Rann's* parish did not pass by agreement with the parishioners, and contained no clause like 19 G. 3. c. 60. § 28. they held that the payments there are rateable. — See the case reported in *Mr. Caldecot's Decisions*; and *post*, pl. 179.

from this trade the said *R.* maintained himself and his family, paid all his necessary expences, and keeps and preserves his capital in manner aforesaid; that by the said rate, being one of five rates made for the relief of the poor of the said borough and parish in the year 1781, the said *R.* is rated and assessed the sum of four shillings as his share or contribution towards the relief of the poor of the said borough and parish, in respect of his stock in trade or personal property aforesaid; which is no more than his share or proportion towards the said rate, and no more than other butchers within the said borough, in similar circumstances with the said appellant, are rated and assessed in respect of their personal property or stock in trade, within the said borough, in and by the said rate. The question therefore is, Whether *R.*, for or in respect of his personal property or stock in trade aforesaid, be rateable in or by the said rate so made for the relief of the poor of the said borough and parish as aforesaid? — WALLACE showed cause in support of this rate; and insisted, that an uninterrupted usage and custom of rating this species of property from the very date of the statute down to the present times being expressly stated, this question had lately undergone a solemn decision (*a*), and was no longer open to argument; and *Bearcroft*, who was to have supported the rule, admitting that it was not possible to distinguish this from the case of *Rex v. Hill*. — PER CURIAM: Rule discharged, and order of Sessions confirming the rate affirmed.

(a) *Rex v. Hill*, ante, pl. 173.

179. *Rann v. Picking*, T. T. 22 G. 3. Cald. 196. — The plaintiff *Rann* was vicar of the vicarage of *The Holy Trinity*, in the parish of *The Holy Trinity*, in the city of C. The defendants were the mayor, a justice of the peace, a constable, and the two overseers. By a private act of parliament 4 & 5 P. & M., reciting, that tithes were payable to the vicar of *St. Michael's*, and *The Trinity*, and that the inhabitants, &c. of these parishes shall yearly, without fraud or covin, pay their tithes to every of the vicars of the said two parishes after the rate, order, and proportion therein mentioned; and by 19 G. 3. c. 57., reciting, that the tithes and other vicarial profits and benefits did principally arise from rates and assessments made by virtue of the 4 & 5 P. & M., that they had much diminished; and that an income might be provided in future for the sufficient maintenance of the vicar of the said parish of *The Trinity*, to be in lieu of all tithes and other ecclesiastical dues; it was enacted, that the 4 & 5 P. & M. should be repealed, and that a rate or assessment should be made, as therein mentioned, in lieu of all tithes, and all rates, assessments, and other ecclesiastical dues and payments claimed by the vicar of the said parish or vicarage under the 4 & 5 P. & M. The tithes as settled by 4 & 5 P. & M. were never rated to the poor. The verdict then stated the manner in which the present rate was assessed, the confirmation of it by the Sessions, the non-payment by the plaintiff *Rann*, and the subsequent distress by the defendants. — LORD MANSFIELD delivered the judgment of the Court: This act does not enable the parish to pay the vicar a gross sum, clear of all deductions, whenever the tithes settled by the act exceed a given amount; as was the case in *Rex v. Toms*. (*b*) There is therefore a distinction between the two acts: here there is no exemption from parochial burthens, how small soever the sum. — *Postea* to defendant.

Payments in lieu of tithes settled under a compromise between a parson and a parish, and confirmed by act of parliament, are rateable to the poor.

(b) *Ante*, pl. 177.

The profits of a weighing-machine-house are rateable to the poor.

See *Rex v.*

Hogg, post.

Cald. 155.

1 T. R. 723,
notes.

180. *Rex v. St. Nicholas, Gloucester, E. T. 23 G.3. Cald. 262.* — The mayor and burgesses of *Gloucester* being possessed of a house in the parish of *St. N.*, erected a machine in a street leading by the said house for the purpose of weighing waggons, carts, &c. loaded with coal and other things; and received from the owner of every such waggon, cart, &c. so weighed, two pence in the ton for every ton the things contained in the said waggon, cart, &c. so weighed amounted to. The steelyard, part of the machine by which the waggons, carts, &c. were weighed, was and always had been in the said house of the mayor and burgesses, in the parish of *St. N.*; and the house was called *the Machine-house*. The mayor and burgesses had no right to compel the owners of waggons, carts, &c. loaded with goods, to bring their waggons and carts, &c. to be weighed at the machine. The said machine-house, independent of the profits arising from the machine, was worth about 5*l.* The profits arising from the machine were worth about 40*l. per annum*. The machine-house was rated to the parish of *St. N.* in the following manner, viz. The mayor and burgesses of *Gloucester* for a machine-house, 24*l.* — 1*l.* 16*s.* — LORD MANSFIELD: It is not in terms said, that *the machine* is annexed to the freehold; but the nature of the thing supplies the defect in the expression. Indeed the expression sufficiently shows it. What is the house? It is "*The Machine-house.*" They are one entire thing, and are together rated by the common known name, which comprehends both; and the principal purpose of the house is for weighing. The steel-yard is the most valuable part of the house; the house therefore, applied to this use, may be said to be built for the steel-yard, and not the steel-yard for the house; and the quantum of the assessment must be allowed to be most moderate; as, although a liberal allowance ought to be made for wear and tear, labour and attendance, the charge does not much exceed the half of the value. — WILLES J. There does not seem to have been any doubt below but that the machine was, as it is described in the rate, appurtenant to the building; if so, its clear profits are undoubtedly rateable. If a billiard-table stand in a house, and the house should, in respect of such table, let at a higher sum, it would be rateable, while the table continued there and was so let, at the advanced rent. — BULLER J. The conclusion of this case is strong to show that the justices considered *the machine* as part of *the house*; for the question they raise, the point they bring forward and refer to the Court is, Whether the profits are rateable? and so long as they are received they undoubtedly are. It is like the case of (a) the *Cheltenham Spa*. There is an extraordinary profit arising from this modification of the enjoyment. The only question therefore is, Whether a man shall be rated for the property he has? If a house to-day is let for 30*l. per annum*, and to-morrow, if turned into a shop, would let for 50*l.*, when it is turned into a shop it shall be rated at 50*l.* Its being called the machine-house, shows that the house and machine are an entire thing. — The order of justices, allowing the rate, was affirmed.

181. *Robson v. Hyde, T. T. 23 G.3. Cald. 310.* — The city of *London* demised to the vicar and churchwardens of *St. M.* a piece of ground in *C.*, in the parish of *St. G.*, with the chapel and vestry-room thereon erected, for forty years from *Lady-day 1768*, at the yearly rent of 18*l.* 15*s.*, with a covenant that the

(a) *Rex v. Miller, ante*, pl. 174.

A private building always used as a chapel, and has contract ne-
cessary for

lessors should at the end of every fourteen years, at the same rent and under the same covenants, execute a new lease of the premises from time to time for ever; they the lessees paying for every such renewal into the chamber of the city of *London* 1311. 5s. by way of fine. An underlease from *June* 24. 1776, was made by the churchwardens and vicar of *St. M.* to the plaintiff and two others of the same premises, for thirty-one years and a half, renewable for ever, at the sum of 120*l.* clear of all taxes. The under-lease, among other covenants, contained the following: "That the lessees should let, use, and continue the present chapel, and any new building to be erected instead of the said chapel, as and for a chapel for the whole of the said term; and permit the service of the church of *England* only to be used therein as by law established, in like manner as the same hath been and is now used and exercised therein, and not for any other use or purpose whatsoever; and should pay to the clergy-men and other officers or servants officiating at, or belonging to, the said chapel all their salaries and allowances: and also should defray all other charges and expences attending the support and maintenance of the said chapel, or in any ways relating thereto; they receiving all the rents and emoluments from pews or seats in the said chapel from the 29th *September* 1776," &c. The plaintiff was the surviving lessee. The rent reserved by the last-mentioned lease had been always applied to the public and charitable purposes of the parish of *St. M.* The plaintiff let the pews and received the rent thereof for his own use and benefit. The said building ever since its erection, which was about 1695, had been applied to no other use than that of divine worship according to the rites of the church of *England*. The parish of *St. G.* upon the 27th of *April* 1782, rated the plaintiff in respect of the said building to the relief of the poor; and the defendants distrained for non-payment of the said rate. The building never had been rated before. The question for the opinion of the Court was, Whether the plaintiff in respect of the said building was rateable to the poor? — LORD MANSFIELD: The doubt in this case can only have arisen from the use of the word "chapel;" but this building is not such in an ecclesiastical sense. It is not a consecrated place; the ecclesiastical law cannot take notice of it; it is a mere private room, let out, it is true, at present for the purposes of religious worship, but which at his pleasure the owner may apply to any other use. It is said, indeed, that he is restrained from doing this by covenant; but the restriction by covenant does not vary the nature of the property. If indeed it were absolutely given to the public, it might be a strong ground to say that it was not rateable; in his hands at least, out of whom the property had passed, and by whom nothing is reserved. But the temporary use to which it is applied cannot vary the nature of the case. He might convert it into an assembly or concert-room; and in that shape would it not be rateable? Under this, then, the most beneficial mode of enjoyment, shall a plea of exemption be admitted? If another, and that clearly a more lucrative one, were once suggested, the lessor and lessee would presently understand each other; and the argument from the restrictions of the covenant would not long continue a bar to the establishment of this charge. — BULLER J. The argument on behalf of the plain-

purpose, is, if a profit is made of it, rateable to the poor.
2 Co. 46.
W. Jones, 186.
Vin. Abr. 426.
Str. 745.
Cowp. 453.
3 Burr. 1341.
1 Bl. Rep. 369.

tiff is supported by a false analogy. His case does not resemble that of a clergyman. But if it did, I am very far from being satisfied that a member of the established church, a parson or vicar, who has the profits of the pews given him by the parish in increase of his benefice, is not rateable for such profits. There is also another important difference. One reason that the law has continued tithes to the clergy is, that it has prohibited their following any other occupation: now the plaintiff is subject to no such restrictions. And to mark the difference still more strongly, every beneficed clergyman in the kingdom, even the poorest of our vicars (and many there are whose pittance is only 20*l.* a year), pay their proportion to the poor. No principles of law then, any more than the interests of religion, prevent the public from calling upon this man for his full proportion. — WILLES J. concurring. — *Portea* to defendants.

An almshouse wholly occupied by objects of a charity or their attendants, and of which no profit is made, although the absolute property of it is in the person who gives the alms, has no legal occupiers, and is not an object of taxation under the poor-laws.

(b) In the case of *Robson v. Hyde*, ante, pl. 181.

The warden of the Fleet is liable to the poor-rates for the profits of his office.

S. C. Cald. 407.

182. *Rex v. Waldo* (a), T. T. 23 G. 3. Cald. 358. — *W.* the appellant, being seized of a messuage at *M.* let at eight guineas per annum, was rated and paid poor-rates for it. About six years ago *W.* pulled down this house and built a new one on the same spot, furnished it, and placed in it ten poor girls, some of the parish of *M.*, and others of the neighbouring parishes; where they were educated, maintained, and brought up on his charity; and provided a woman and paid her wages as his servant to superintend them, instruct them in reading and working, and to qualify them for services. This woman and the ten children were the only persons resident in this house, which was solely appropriated for this purpose; and vacancies from time to time supplied at *W.*'s discretion and choice. — LORD MANSFIELD: The parish have acted in a shameful manner to rate a house applied to a purpose so beneficial to it. The Court took the distinction yesterday. (b) *W.* makes no profit of this building; and it is sufficient that this is so in fact, and the profit is here, in fact, applied to public and charitable uses. — BULLER J. Do you mean to argue that if a man give all he has in charity, he shall apply something more in charity? — WILLES J. concurring, the rate was quashed.

183. *Rex v. Eyles*, H. T. 24 G. 3. EDITOR'S MSS. — The Sessions stated, that His Majesty by letters patent, dated 5th March 1760, granted to *E.* the office of warden or keeper of THE FLEET, and the custody of the prison or gaol of THE FLEET, and of the prisoners committed or to be committed to the said prison, and the capital messuage for the custody of the prisoners, and thirteen messuages in the parish of *St. B.*, and all other messuages, lands, tenements, and hereditaments to the said office belonging and appertaining, and all the other fees, salaries, rents, profits, emoluments, commodities, privileges, and hereditaments to the said office and prison, and to the keeper or the custody of the same belonging; and him the said *E.*, warden or keeper of the Fleet, and of the prison and gaol of the Fleet aforesaid, did make and constitute to have and to hold and exercise the said offices, messuages, &c. during the will and pleasure of His Majesty: that the said *E.* was rated in a rate for the relief of the poor of the parish of *St. B.* on the 17th April last, as an occupier of 400*l.* a year: that the thirteen messuages mentioned in

(a) See *Rex v. Agar*, post, pl. 299.

the letters patent have since been reduced in number to nine distinct tenements, the occupiers of which are respectively rated, and are not included in the rate complained of: that part of the capital messuage in the letters patent mentioned consists of certain rooms where the prisoners committed to, or detained in, the said prison, in the custody of the said E. as warden, are lodged; who severally and respectively pay to the said E. as warden the weekly sum of 1s. 3d. for each of the said rooms when occupied in the said prison; that a certain other part of the said capital messuage is used as a separate dwelling-house for the residence of the said E. as warden, and occupied by him, his family and servants, and is of the yearly value of 40*l.*: that the present warden and his late father have constantly paid to the poor's rate for the said prison at the rate of 300*l.* a year, until within a few years last past, when upon the raising of the said rate to the sum of 400*l.* the warden first objected to the payment thereof: that the whole of the said capital messuage, as well that part occupied by the prisoners, as the other part occupied by the said E. and his family, is generally rated in the said assessment, and the said E. rated in respect thereof.—The Court of Quarter Sessions confirmed the rate. — LORD MANSFIELD: In order to assess under the statute of the 43 Eliz. c. 2. it is not sufficient to find property only; an occupier must also be found, who may be rated in respect of that property. In *St. Luke's* case (a), the use that was made of the property was such that there could be no occupier. The question here is partly law, partly fact: it is, Whether the warden is occupier of what he lets out in lodgings? He is bound to receive and keep his prisoners; but he may keep them anywhere within the bounds of the prison: many are sent to the common side; there he makes no profit, and is not rated: others are kept out of the prison itself in private lodgings within the rules. Is there any doubt but the occupiers of those houses are rateable? A third way he has of keeping them is in these chambers: he is not bound to keep any prisoners there: he admits none that will not pay: when they cease to pay he turns them out. This case was sent back to have the usage stated, and it comes out that this property has always been rated; and I have no doubt but that the present dispute arose from the determination as to the window-tax. It appears, too, that the King's Bench and other prisons are rated. Little argument arises from the not rating county prisons, because they are used chiefly for the custody of felons, and in general no profit is made of them. I lay no great stress on cases of burglary and other criminal prosecutions; yet it is clear, that to these purposes this would be the dwelling-house of the warden. — WILLES J. Every thing which yields a certain annual profit is rateable. It was so laid down in *Rex v. Cardington*. (b) The case of *St. Luke's* does not apply, for there no profit was made. The distinction in this very prison shows it; for the common side yields no profit, but this side does. It is said that this profit is not rent, but fees; but exclusive of this, he has fees on admittances and discharges, and that answers the word "fees" in the grant. From necessity, if the warden were to break open the prisoner's room, it would be laid in the indictment to be the dwelling-house of the prisoner; but that will not prove the warden not to be the occupier to other purposes. A guest's room in an inn would be described.

(a) *Ante*, pl. 157.(b) *Ante*, pl. 172.

(a) 1 Hale, 555, 556.

in the same way in an indictment for burglary against the landlord (a); but that does not prevent the landlord from being rated. In the window-tax case, the question was, Whether it was a dwelling-house or not? This is not rated as a dwelling-house, but as property occupied, by which a profit is made.—ASHHURST J. I am of the same opinion. There is nothing in reason, or even technically, to distinguish this from the common case of an occupier making a profit. The window-tax case does not apply; for there it was expressly stated that the house belonged to the Crown, and it was not stated that the warden made a profit by it.—BULLER J. I have no doubt that this case arises out of the window-tax case. To say the best of that case, it was a favourable determination; but it is not applicable to any case on the poor laws: it was a construction on the words of the statute; and two of the judges have now stated the reasons on which it went, that the act extends only to lights in dwelling-houses. When this case came on before, I had no doubt as it then stood. With respect to usage, it may explain facts, but never can alter the words or meaning of an act of parliament. The question, Whether prisoners are occupiers,—was much considered in *Rex v. Donnavan* (b), which came from *Liverpool*; and it was settled that they are not: they are like lodgers; and it never was imagined that a person hiring a first or second floor was rateable; the landlord is rated for the whole house. The case of *Robeson v. Hyde* (c) is strongly applicable; and there are many instances, especially in LONDON, of houses that can be used only for a particular purpose. As to this not being rent, but fees, there is nothing so decisive on that point as the rules of Court restraining the warden from taking more than 1s. 3d.: it is then called chamber-rent.—Order confirmed.

(c) *Ante*, pl. 181.

Lands purchased by a company and converted into a dock according to an act of parliament, which declares

184. *Rex v. Hull Dock Company* (d), *E. T.* 26 G. 3. 1 T. R. 219. — The case stated, that in pursuance of 19 G. 3. the commissioners in and by the said act appointed, did, before the making of the said dock or bason, purchase divers lands and grounds in the parish of *Sculcoates*; all which lands, as well before the purchase thereof as afterwards, were assessed, and did pay the land-tax and all parochial assessments to the parish of *S.* in com-

(b) This was a case reserved by Mr. Justice Gould, at the Lent assizes for *Lancaster*, 1770, on the trial of an indictment against *James Donnavan* for arson. The prisoner was confined in the common gaol of *Liverpool* for debt, and voluntarily set fire to his box, which was a little apartment in the prison, and the whole gaol would unavoidably have been burnt down, if timely assistance had not extinguished the flames. The gaol belonged to the corporation of *Liverpool*, and there was a dwelling-house adjoining to it for the keeper to live in; but in which he permitted his mother-in-law to reside, for the purpose of keeping a public house. This house was separated from the prison by a wall; but the entrance into the prison was through the dwelling-house, by means

of a door made in the wall, which door was locked every night. No person inhabited the prison except the prisoners; but if any of the prisoners were able to pay for a bed, they were always accommodated with one in the house. The question was, Whether this prison, so constructed, could be considered as a dwelling-house? It was argued at Serjeants'-Inn-Hall, on the first day of Easter Term, before all the Judges, except Mr. Baron Adams; and they were unanimously of opinion, that this dwelling-house was to be considered as part of the prison, and the whole prison as the house of the corporation. See 2 Black. Rep. 682. Cases in Crown Law, 67.

(d) See *Rex v. Sculcoates, ante*, pl. 101. *Rex v. Bath, ante*, pl. 104.

mon with all the other lands in that parish, and that the said *Dock Company* did cut and convert three acres, two roods, and twenty-nine perches of land, part of the said lands so purchased as aforesaid, and lying within the parish of S., into the said dock or bason; and that the same are now part thereof, the whole dock or bason containing ten acres: that in that part of the said dock or bason within the parish of S., twenty or thirty ships or vessels, or thereabouts, frequently lie and are moored for several months together, particularly in the winter season; and that the apprentices belonging to such ships usually lie on board such ships or vessels during all the time they are so stationed: that in the year 1783 the said *Dock Company* received for tonnage of ships granted by the said act 5000*l.*, and expended in officers' salaries and requisite repairs 1800*l.*, so that the net proceeds amounted to 3700*l.*; that the said *Dock Company* do not owe or stand indebted to any person or persons, in any sum of money or security at interest, either borrowed under the authority of the said act, or otherwise: that there are 120 dock shares in this company of 500*l.* each, on which the several proprietors have only actually advanced and paid 300*l.* for each share, and that the same now sell at 525*l.*: that on the 7th day of May 1784, an assessment was laid on the lands and tenements in the said parish of S., for the relief of the poor therein, for the year 1784, at 1*l.* 4*d.* in the pound, which rate was afterwards duly allowed by two of His Majesty's justices in and for the said *Riding*, and published in the parish-church of S., according to the statute in that behalf made, and is in the words following: "For that part of the *Dock* lying in the parish of S. 800*l.*.—59*l.* 6*s.* 8*d.*."—*PER CURIAM*: This is landed property lying within the parish, which clearly was the subject of a rate before the passing of this act of parliament. Then the question is, Whether the act exempts this property, which was rateable and rated before? But there are no words of exemption. As between the heir and executor, this is to be considered as personal property; but the legislature did not intend to alter the nature of it in any other respect.—*Rate affirmed.*

185. *Lord Bute v. Grindall* (a), T. T. 26 G. 3. 1 T. R. 338.—*SPECIAL VERDICT*, which stated that the king, by letters patent dated 25th June 1781, granted to the said earl the office of ranger and keeper, and the custody of all that his said park, called *New Park*, near *Richmond*, and the custody, survey, and preservation of all and singular the houses, lodges, edifices, walks, deer, wild beasts, and game, in his said park, there being or thereafter to be, to have, enjoy, exercise, and occupy the said office, unto him the said earl, by himself, or his sufficient deputy or deputies, during his pleasure. And further, for the better execution of the said office, His Majesty by the said letters patent did give and grant unto the said earl, the *herbage and pannage* of the said park, over and above the keeping of the game within the said park, from time to time being; and also, the fees of three bucks and three does every season; and also the wages and fee of six shillings by the day, for every day in the year, payable as in the said letters patent is particularly specified; and also, all woods and underwoods, commonly called browse wood, wind-fall wood, and dead and decayed trees, mast and chiminage happening or falling from

that the shares of the proprietors shall be considered as personal property, are rateable to the poor in proportion to the annual profits.

The ranger of a royal park is rateable as such to the poor for inclosed lands in the park yielding certain profits; but not for the *herbage and pannage*, while they yield him no profit.

See ante, *Jones v. Maunsel*, pl. 176.

(a) See *Rex v. Brown*, post, pl. 220.

time to time within the said park, together with the necessary timber for repairing the houses, lodges, edifices, and walks in the said park, and such timber as should be wanting and necessary for dividing, separating, and inclosing any parts or parcels of lands within the said park, as should from time to time be judged convenient for improving the pasture and herbage thereof, and for beautifying the said park as was therein before mentioned, to be granted, so as such timber so to be cut down at any time should be made use of and employed within his said park for the purpose aforesaid, and not elsewhere or otherwise, unto the said earl during His said Majesty's pleasure, together with the liberty of planting trees against the wall of the said park; and all other wages, fees, profits, rights, perquisites, commodities, advantages, and emoluments to the said office belonging or appertaining, as of right had, taken, received, or usually enjoyed with the like office, without rendering, paying, or making any account, or any other thing for the same to His said Majesty, his heirs or successors, in any manner whatsoever. That 269 acres or thereabouts of the said park are, and before the said earl became ranger were, and from thence hitherto have been, situate in the parish of Putney. That 230 acres or thereabouts, parcel of the said 269 acres, during all the time aforesaid, have been and still are inclosed lands called the *Caddocks*, and 39 acres residue thereof, during all the time aforesaid, have been and still are open to park pasture. That 106 acres of the said 230 acres of inclosed lands, during all the time aforesaid, have been and still are meadow, and the remaining 124 acres, during all the time aforesaid, have been and still are arable land, and have been and still are ploughed, and sown with corn, and with rye-grass and clover, in the ordinary course of husbandry. That the meadow, during all the time aforesaid, has been mowed, and the hay thereon made at seasonable times of the year, by mowers and hay-makers hired as common labourers, and paid by the king. That the king has found the hay seed. That 66 loads of the hay when made have been yearly carried out of the inclosed lands into the park, by servants paid by the king, in the king's waggons, drawn by the king's horses. That it has been there stacked in convenient places for the use of the deer, and the overplus of the said hay has been stacked up in a place in one of the inclosed paddocks, called the rick-yard, for the use of the king's horses, and the ranger's horses. That sometimes there has been no overplus. That last year there was not enough for the deer; but that the average quantity of hay made in the said inclosed meadow land, one year with another, has been one load on an acre. That the number of the king's horses has not been limited. That they have usually eat about 30 loads in a year; but they might have eat it all, if there had been enough of them. That 40 or 50 head of cattle have come into the said inclosed meadow lands in November in every year, and have stayed there till April or May following. That as to the arable land, when it has been sown with corn, the ranger has found the corn seed; and when it has been sown with rye-grass or clover, the king has found the seed. That it has been manured, ploughed, and sown by the king's servants and horses. That the manure has come from the king's stables, and has been carried out on the land by the king's teams, at the king's expence. That the corn has been reaped by labourers paid

by the ranger, and has been carried by the king's servants and teams to a granary near the ranger's lodge, which is about half a mile from the inclosed paddocks, there being no barn on the said inclosed paddocks. That it has been carried from thence to the market, and there sold for the benefit of the ranger. That the king has had no part. That the straw coming from the said corn has been used for thatching the hay-ricks, and for the king's cart-horses, which have usually been about 14 or 15 in number; but they have been chiefly littered with fern. That when the arable land has been sown with clover or rye-grass, the king's and the ranger's horses have eat the hay made thereof, and the overplus, if any, has been laid up for the like use in future, but has never been sold. That in the month of November, five or six brace of deer have been yearly turned into the paddock amongst the corn, to be fatted for the king's birth-day. That they have eat the green corn; and the corn has been likewise hurt by the keepers riding up and down amongst it to search for the deer which have hid themselves in it; notwithstanding which there has been sometimes a pretty good crop. That three or four score of sheep belonging to the ranger have been turned into the arable lands, about the autumn in every year. That the profits arising to the ranger from the whole of the said lands are worth 100*l.* a year. That as to the 39 acres open to park pasture, the ranger has not received any profit at all from them. That the herbage and pannage of the said park have yielded no profit to the ranger; and that no swine have been fed in the said park. — LORD MANSFIELD: The question on this verdict is, Whether the plaintiff is rateable at all? — not for how much, or in what proportion. It is clear that he is not rateable for the herbage and pannage, because they yield no profits. But there is a parcel of land inclosed, which he sows, and afterwards reaps the corn from, to the amount of 100*l.* a year; therefore he is occupier: and *quo nomine* occupier can make no difference, whether by gift or for wages. This is like the case of *Rex v. Matthews*, where it was held, that a servant occupying the lodge and two acres of land, whether he paid for them by a rent or by service, was equally liable. — BUTLER J. It is perfectly immaterial what interest the occupier has in the lands; whether he holds as tenant at will, or by any other tenure: it is not necessary to inquire into the occupier's title. — On the first count, judgment was given for the defendant; and on the second count, for the plaintiff. This case was carried by writ of error into the Exchequer-chamber, where the question was, Whether the Earl of Bute was liable to be rated for the 199 acres and 12 perches of inclosed land, being meadow and arable, parcel of Richmond park, and 39 acres 1 rood and 32 perches of land, also parcel of the park, but open to park pasture and not inclosed; and in Michaelmas Term, 34 G. 3. Lord Chief Justice Eyre, after stating the case, delivered the opinion of the Judges (a), viz. Upon this loose and inaccurate statement in the special verdict, the question is reserved, Whether Lord Bute was liable to be rated and assessed to the poor, in respect to these lands? If Lord Bute had been found to be the occupier of the lands, there would have been no room for a question respecting his liability to this assessment; on the other hand, if he was not the occupier, whatever might be his connexion with the occupier, short of joint

(a) See 2 H. Bl. Rep. 267.

(a) 3 Bl. Rep.
1380.

occupation, if for instance, he was only a servant to the occupier, it seems that according to the current of the authorities, and the case of *Milward v. Coffin* in particular (a), he was not liable to be assessed in respect of these lands. The not finding this fact of occupation directly and plainly, one way or the other, created a difficulty in my mind, and I believe with some of the other Judges. This occasioned the cause to stand over, and as we were not till very lately pressed to give judgment in it, I had concluded, especially after the death of *Lord Bute*, that the cause was at an end. But being now called upon, we who heard the argument, being a *quorum* of the court of error, have thought it right to give judgment, without putting the parties to the expence and delay of another argument before a full court, and we are at length come to this conclusion, that though this special verdict is extremely loose and inaccurate, an occupation of these lands sufficient to support this assessment may be collected from it. The finding upon which we rely, is that the profits arising to the ranger from the whole of the said inclosed lands are worth 100*l.* a year. If these profits arose to the ranger from these lands, during the rangership of *Lord Bute*, they arose to *Lord Bute*, and if they arose to him *ed ratione* as ranger, we must understand them to be the profits of lands appertaining to his office of ranger. Having them by a title, and *virtute officii*, they arise to him immediately, and we think it may be stated as a general proposition, that the immediate profits of land (some mines excepted) are a proper subject of assessment; or, to speak more correctly, that the person who is in the possession of the immediate profits of land may be taxed to the relief of the poor, in respect of those immediate profits: that *quoad* these immediate profits of the land, he is an occupier of the land, within the meaning of those authorities which have decided that the occupier only can be assessed to the relief of the poor. The case of *Rowls v. Gell* (b) is in its principle an authority for this doctrine. There the lessee under the crown of lead-mines was holden to be rateable to the poor, for the profits arising from lot and cope, lot being the thirteenth dish or measure of lead-ore got and made merchantable by the adventurers, and cope being 6*d.* for every nine dishes of lead-ore, raised by those adventurers. — LORD MANSFIELD, in giving judgment, observed, that in general the farmer or occupier of the land, and not the landlord, was liable to the poor-rate; that the landlord was never assessed for his rent, because that would be a double assessment, as his lessee had paid before; but that if there were profits to the landlord, which were a proportion of the profits of the land, for which the tenant had not been assessed, there was no reason to exempt these proportionable revenues from this tax; and it was holden that he was liable to be rated for this property. In that case, strictly speaking, the lessee of the lead-mine was landlord, and not occupier, but he was considered as occupier *quoad* those profits, for the purpose of an assessment to the relief of the poor. He was in the possession of profits arising immediately from the land, he was an occupier of the profits of the land, and, as such, rateable: so was the *Earl of Bute*, in the case now stands for judgment before us. We are therefore of opinion, that this judgment ought to be affirmed. The judgment was affirmed. But it was afterwards carried to the House of

(b) *Anle*, pl. 169.

Lords, where the case was twice argued, but no judgment was given.

186. *Rex v. Hogg* (a), *E. T.* 27 G. 3. 1 *T. R.* 721. and *Cald.* 266. — *H.* was rated to the relief of the poor of *R.* for a building called *The Engine-house*, which consisted of a bay of building about eighteen feet long and nineteen wide, in which there was a carding-machine for manufacturing cotton. The engine was not fixed to the premises, but capable of being moved at pleasure. The building, independent of the machine, was worth only two guineas *per annum*, for which *H.* was willing to be rated. The building and machine together were rated at 96*l.* The usage of the town of *R.* had been not to rate personal property. The engine therein mentioned was *generally worked with water*, but frequently by the hand. The building wherein the engine stood was *not a dwelling-house*, nor was it erected for the purpose of receiving the engine, but formerly was used for the purposes of turning bobbins, and as a weaver's shop, and was then used for the purpose of carrying on the cotton manufactory, there being in the same building two other engines, besides the engine before mentioned, worked as *aforsaid*; one of which was also used for the purpose of carding, and the other for tumming cotton, which tumming is another process of the same manufactory. All the engines were placed on the floor, and no ways annexed or fastened to the same, but might be moved at pleasure, and carried out and worked in any other place, either by means of water or manual labour, and were not adapted to any particular building. The frame, in which the engine stood, was twelve feet in length, three feet eleven inches in breadth, and two feet nine inches in height, the semidiameter of the largest cylinder with a small roller at the top rising twenty inches above the frame; the engine sinking in the frame seventeen inches. *W.* was the lessee of the premises under the owners, and was subject by his lease to discharge the premises from all taxes: *H.*, the appellant, was the under-tenant, but *W.* paid the taxes. — *ASHHURST J.* It seems to me that this case is still left imperfect, for it is not stated negatively that this engine, while it is in a state of working, is not in some way or other fixed to the house: it is only stated that it is not fixed to the floor; but it may be fixed to the walls of the building without being fixed to the floor. And considering the nature of the thing, it must be so; for it is stated that the engine is worked by water, and the force of the water would displace it, if it were not fastened to the building. We cannot take any facts that do not appear on the case, as it is now returned; and it is not stated negatively that the engine is not fixed to the house. At all events, part of the subject is rateable; and the rate is on the house itself; and if the thing itself be rateable, the quantum of it is not for our consideration, but that of the justices below. There are many other circumstances stated here which would induce us to discharge this rule. This case comes directly within the case of *M. Nicholas, Gloucester*. (b) The house and engine are leased as an entire subject; for it is stated that the premises (which comprehend the house and engine together) were let to *W.*, who underlet to *H.*; and that takes away all leaning we might otherwise have to discourage a tax which might possibly be a tax on labour; for this is not such a tax, but on the contrary it is expressly stated to be a

A house with a carding-engine in it described in the rate as engine-house &c. &c.

(a) See *Rex v. Brighton Gas Company*, *post*, pl. 252.

(b) *Ante*, pl. 180.

rate on the lessor of the premises. On the whole, therefore, *I* am of opinion, that there is no good reason to induce the Court to make this rule absolute.—BULLER J. I have always been of opinion, that it would have been better to have given a direct opinion at once upon the construction of the 43 *Eliz. c. 2.* than to state particular cases, in order to see whether they formed exceptions to the act, without giving an opinion on the general construction of it. In the case of *Atkins v. Davis (a)*, I stated the principle to be, that every man should pay according to his ability; it seems to be a principle of natural justice; and if that be right, the Court has nothing to do in doubtful cases, but to see

(a) The case of *Atkins v. Davis* was last argued in T. T. 23 G. 3. — It was an action of trespass, in which the trustees of the *London Bridge water-works* were the plaintiffs, and the constables who had taken the goods by way of distress for a tax made on the property of the proprietors, pursuant to an order of Sessions, made under the authority of the Riot Act upon the inhabitants to repay the damages sustained by the riots in the year 1780. The arguments turned on the question, Whether this property was rateable to the poor by the 43 *Eliz. c. 2.* upon the following state of facts:—That the company is not incorporated; and that their property consists of,

1st. Their offices, with the wheels and works for raising the water.

2d. A wharf, called Mault's wharf.

3d. A house for the use of their secretary, detached from their works and wharfs.

4th. A fire engine, used for raising the water to a proper height, also detached; and,

5th. The pipes, trunks, branches, &c. laid and dispersed in the different streets, not only in the city of London, but in the county of Middlesex and borough of Southwark, for the conveyance of their water.

That the whole of this property is within the ward of Bridge Within; except the works with their pipes, trunks, and branches on the Southwark side of the river, and except such parts of the pipes, trunks, and branches as are a continuation from the pipes, trunks, and branches within the said ward, and which are from thence dispersed in the different streets out of the ward, and out of the city of London, but are all originally derived from and connected with the pipes, trunks, and branches within the ward: that the whole profits arise from the water-works, and which are repaid by the persons supplying water from the works, amount

to 2500*l.* per annum; out of which 276*l.* 10*s.* is collected in the ward of Bridge Within, and the rest of the profits is collected elsewhere within the city of London, borough of Southwark, and county of Middlesex: that all these receipts are accounted for by different collectors at the above-mentioned office, where the books and accounts of the company are kept, and all the business of the company transacted; but the money so collected is paid into the hands of a treasurer residing without the ward: that the proprietors of the company are rated at 2500*l.* to the land-tax, for their shares only, by virtue of 21 G. 3. c. 3. § 57. by the commissioners of the city generally; and pay the sum assessed upon them to a particular collector appointed by those commissioners; but that the other property of the company is rated by the commissioners of the ward, and the sum assessed thereupon is paid to the collector of the ward; that the damages and costs payable by the city of London to the several plaintiffs in respect of several actions brought against the inhabitants of the city on occasion of the late riots, amount to 28,299*l.* 17*s.* 7*d.*—The Court was divided in their opinion on this subject: Lord Mansfield and Mr. Justice Ashurst being of opinion that it was not a species of property liable to be rated; and Mr. Justice Willes and Mr. Justice Buller of a contrary opinion. For the purpose of removing it by appeal to the Exchequer-chamber, judgment was taken for the plaintiff by consent. But the general question was never decided by the Court of Exchequer giving judgment on another ground, viz. that the construction of the Riot Act, which speaks of *ability* in general, and does not specify, as 43 *Eliz. c. 2.* does, any particular taxable object, or refer at all to that statute, all persons having personal property within the district assessed as inhabitants, and as such rateable. The judgment for the plaintiff was therefore reversed.

how they can be adapted to the principle. In that case I agreed with the Court, that we could not impose a new tax on the subject by construction; we are not to make, but to explain the law. But I then thought, and still do think, that, as a general question, personal property is rateable; and the question ought always to be, Whether the particular case be an exception to the general rule? I am very well aware of the great difficulty of rating personal property in all cases: but if it can be done, we must pronounce the law; and I think by law it is rateable. Now in this case it is objected, that the property is distinct in its nature; that the building and the engine are not the same, because the former would go to the heir, and the latter to the executor. This may be so in some cases, but I think the objection is perfectly immaterial here. If the house be freehold it will go to the heir, if leasehold to the executor; and if the engine be distinct from the house, that at any rate would go to the executor. But if the property in its nature rateable, it is indifferent to whom it will belong. However, in this case it is clear, that both the engine and the house go together, for they are in the hands of a leaseholder; they are rented together, and therefore would go to the executor. But in my opinion that does not make any difference in the question. The counsel for the appellants then objected, that this is a rate on manufactures. I agree that it is so; yet it is not a rate on labour, which cannot be maintained, but on the produce of labour; and the produce of labour is rateable. What a person may acquire in a profession, is not *eo nomine* rateable; but if, with his profits, he purchase land, &c. that may be rated. Therefore in questions of this kind we are not to go into the manner in which the property may have been acquired; but the question ought always to be, Whether the thing which exists is to be rated? And the rule is, that personal property, if visible, and yielding a certain annual permanent profit, may be rated. In the present case, the house and the engine are let together as an entirety; and upon this ground also I am of opinion that the rate is good. — GROSE J. The question for the opinion of this Court is not, Whether the rate itself be equal or not? that is a matter for the consideration of the justices below; but the question here is, Whether by law this particular species of property as described in the case is or is not rateable? Now the property in question is an engine-house fitted up with this engine in it (whether fixed to it or not is not stated), and all let together under one lease; for it appears that *Walmisley* was the lessee of the premises, which comprehends the engine as well as the house. Then the engine is let as part of the house; and the rate is upon the engine-house. Now by the express words of the statute 43 *Eliz. c. 2. § 1.* every occupier of lands, houses, &c. is liable to be rated. Leasehold property has always been rated, and this comes within the description. Suppose the owner of a tenement, which unfurnished would let only for a trifling rent, and it up as a malt-house, and put a malt-mill into it, and then let the whole together, the whole must be estimated together, as any other leasehold property, according to its value. It has been argued that this rate cannot be supported, because it has not been the usage in *Ribchester* to rate personal property. But we are interpreting an universal law, which cannot receive different constructions in different towns. It is the general law of the land,

that this kind of property should be rated; and we cannot explain the law differently, by the usage of this or that particular place. If there had been any agreement entered into by all the inhabitants of the town not to rate any particular species of property for their own accommodation, that might have been binding upon themselves as an agreement: but if a case be stated for the opinion of this Court upon the law on the subject, we cannot construe the act of parliament according to their agreement. As to usage, I am clearly of opinion, that it ought not to be attended to in construing an act of parliament, which cannot admit of different interpretations: where the words of the act are doubtful, usage may be called in to explain them. Here it is not pretended but that the house is worth the sum at which it is rated; and if so, we cannot say that property in such circumstances shall not be taxed. As to the argument of this being property of different kinds, and that part of it would go to the heir, and part to the executor, it does not prove that the house ought not to be taxed at the sum at which it is let, but it attempts to prove that it should be taxed only at the sum for which it would be let, if there were no fixtures; but here the house and the engine are let together as an *entire subject*, and as such they are liable to be rated. This case is not to be distinguished from that of *St. Nicholas in Gloucester*. (a) — Rule to quash the order of Sessions discharged.

(a) *Ante*, pl. 180.

If A has an exclusive right of using a way-leave over land which he holds in common with B, paying B a certain sum yearly, and has the privilege of using a way-leave occupied by C, paying him so much *per ton* for the goods carried over it; A is not liable to be rated in relief of the poor in respect of either of such way-leaves.

187. *Rex v. Jolliffe*, M. T. 28 G. 3. 2 T. R. 90. — The case: The appellant is the proprietor and worker of certain coal-mines and collieries in the township of *W.*, which have been won by him and wrought for above five years last past. For the purpose of exporting the coals won and wrought out of the said coal-mines and collieries, and vending the same by water-sale, the defendant contracted with *M.* (who is tenant in common with him), and others, whose respective grounds lie between the collieries and the river *W.*, for certain way-leaves or liberties of passage for leading coals with coal-waggons or otherwise, and of making and laying waggon-ways in and through their lands and grounds in the most convenient direction to or towards the river, for a certain term of years, at and under certain yearly rents or payments, and upon certain conditions stipulated and agreed upon. In pursuance of those contracts, the defendant obtained leases from those several persons of such way-leaves, and liberty of making and laying waggon-ways in and through the lands and grounds of the lessors respectively (*prout* the said several leases). The appellant hath not made or laid any waggon-way in, through, over, or along any lands or grounds in the township belonging to any of the lessors; but he made and laid, and now uses a waggon-way upon a small part of the lands and grounds in the same township, of which he is tenant in common with *M.* And *E.* having several years prior to the granting of the leases laid and made a waggon-way through and along the lands and grounds of the lessors, for the use of his colliery at *B.*, in the said county, by virtue of certain leases similar in point of general form to those hereinbefore mentioned and referred to above, the appellant, with their consent, agreed with *E.* for the use of his waggon-way for conveying the coals of *W.* colliery to the river *Wear*, paying to *E.* a certain sum of money for every ton of coals he, the appellant, should cause to be carried along the said way, for and towards the making

and repairing of the same. *E.* enjoyed and used the waggon-way for several years, without being rated to the poor for or in respect of the same: but he hath been rated according to the rents he pays for the way-leaves demised to him, and hath paid the money rated or charged upon him for these three years last past and upwards. Some parts of the waggon-ways made by *E.*, and over and along which he and the appellant lead and carry their respective coals as aforesaid, are fenced on both sides off and from several fields or inclosures through which they pass, and other parts of the waggon-ways lie open to those fields or inclosures. — *ASHHURST J.* It cannot be said on this state of the case, that the defendant was an occupier of any thing; for all that he has is a concurrent right given him by *E.*, of making use of this way-leave at so much *per* ton for all the coals that he should carry, which is nothing more than a purchase of the liberty of carrying every ton of coals. *E.* having himself only the way-leave, he could not lease that right to any other without the consent of the owners of the land. And whether in *E.*'s leases the soil did or did not pass, at all events it did not pass to the defendant. He had only the liberty of using the waggon-way; and whatever might be the case with respect to *E.*, concerning whose right it is not necessary to give any opinion now, this defendant has only a bare licence, and in respect of such licence he is not liable to be rated. — *BULLER J.* This question will depend on considering the nature of the right which the defendant has. This is only a bare right of passage, which is an *easement*, and not a grant of the profits of the land. And it is admitted, that if it be only an *easement*, it is not the subject of a rate. One of the leases referred to in the case seems to be drawn in a very strange manner: the general purpose of it is to grant to the defendant a right of way, but it contains a clause which conveys the soil under certain terms. But the facts which are stated in this case lay that part of the lease out of the question; for the soil is granted in such parts only where the defendant shall make a way, and as he has never made any way, he cannot have the soil. With respect to every thing else which is granted to the defendant under these leases, it is a mere right of passage; and if he were rated for that, it would be a double rate. In the case of the *tolls*, it is not he who pays, but he who receives the toll, that is rated. This is not like the case of a grant of land to be used in a manner incompatible with any other mode of enjoying it; for the defendant has only the liberty of passing over this land for the purpose of carrying his coals, and cannot prevent any other person from using it. And if grass were to grow on this way, the owner of the land would have a right to feed his cattle on it: the easement which the defendant has does not affect the right of the owner of the land. Great inconveniences would result from rating every way-leave; for if a neighbour were to give a right of passing over his field merely out of friendship, and no rent were paid for it, such liberty of passage would not be the subject of a rate, because the land can only be rated in the hands of the occupier; but if he were to make an advantage of it, as such it may be rated in his hands. — *GROSS J.* I am glad that this case has been argued a second time: since the former argument I have thought a great deal upon the subject, and I am now convinced that I was mis-

taken in the opinion which I at first formed. After considering all the cases, and the inconvenience which would attend a contrary determination, I am clearly of opinion, that a mere easement cannot be rated. But whether this way is rateable or not, there is no doubt but that the occupier must be rated, and that the same thing cannot be twice rated. In order to support this rate, the defendant must be rated either for the way, or the land over which the way passes. But he cannot be rated for the latter, because the land must have been before rated in the hands of the occupier of that land. Neither is he liable to be rated for the former, because it is positively stated that he never made the waggon-way, which he had the power of doing under the leases; but by the consent of E. he has used those way-leaves which E. had made. And if any person could be rated for these way-leaves, it would be E. — Rate quashed.

Stables rented by the colonel of a regiment, by order of the Crown, for the use of the regiment, are not liable to be rated to the relief of the poor.

188. *Lord Amherst v. Lord Somers*, E. T. 28 G. 3. 2 T. R. 372. — Trespass for taking the plaintiff's goods: Plea, the general issue. On the 26th of July, 1780, His Majesty by his sign manual gave a warrant to Lord B., the then captain and colonel of the second troop of horse guards, RECITING, that it had been represented to His Majesty, that the term heretofore granted of the stables and riding-house occupied by his troop, would expire on the 24th June 1783; that the proprietors thereof would not agree to grant a further term; and that it would be for the benefit of his troop to agree with A. for the building of stables and a riding-house for the use of the troop, and to take a lease of the same for forty years from the 24th June 1783, (when the lease of the stables then occupied would expire), at the yearly rent of 339*l.*, by which His Majesty authorized Lord B. to agree with A. for the building of stables and a riding-house, and to accept and take a lease of such stables, and riding-house, when completed and finished, for forty years from the 24th June 1783, at the rent above-mentioned, and to execute a counterpart of such lease, and directed that it should be binding upon Lord B., and the captain and colonel of his second troop of horse guards for the time being, during the said term. An agreement was accordingly entered into between Lord B., as captain and colonel of the second troop of horse guards, and A., for building the stable, riding-house, offices, rooms, stalls, lofts, chambers, and apartments (according to a plan then delivered), in which agreement A. covenanted to complete the buildings on or before the 1st of June 1783, fit for the reception of all and every the servants, grooms, hostlers, horses, and cattle, belonging to the troop of horse guards. And the agreement contained all the usual covenants which were to be inserted in the lease. On the 10th of March 1782, Lord B. died, and upon his decease the plaintiff was appointed captain and colonel of the troop. The stables, riding house, and premises were finished, and the key thereof delivered by A.'s clerk to Lord A.'s porter, and the horses of the troop except the horse of and belonging to the captain and colonel of the troop, have ever since been and still are kept therein. No person resides constantly at the stables, nor is there any room or apartments fitted up in the same for the purpose of residing or dwelling therein. Two grooms are hired and paid by the purveyors to take care of the horses; each of whom in his turn sits up by

night with two troopers as centinels. The only use made of the stables is to keep the troop horses with the accoutrements belonging to them, except the horse and accoutrements of and belonging to the captain and colonel of the troop, which never have been kept at the stables. The rent of the stables is paid by the agent of the troop, and is charged by him on all the troop (except the colonel, the chaplain, and the surgeon), and is stopped out of their pay. The colonel appoints the agent, and displaces him at pleasure; and has the absolute direction of the regiment, and the funds of it. A certain sum is issued by government for each regiment, and paid whether the regiment be full or not. If the regiment be not full, the pay of such soldiers as are wanting to complete it goes to the colonel: but still the same stoppage is made out of each man's pay for the payment of the rent of the stables, as when the regiment is full. The plaintiff was rated for the same stables, riding-house, and premises, being situate in the parish of *St. M.*, for the relief of the poor of the parish for the year 1786, at 13*d.* in the pound, which, according to the rent of 339*l.*, amounted to 18*l.* 7*s.* 3*d.* — *ASHHURST J.* It is admitted that neither the possessions of the *Crown*, or of the *public*, are liable to be rated to the poor. Then must not the property in question be considered as falling within one or the other of those descriptions? It is clear that there is no actual occupation by the plaintiff, and that it is only used for the reception of the troopers' horses; neither can the persons who in turns work in the stables be said to be occupiers. It has been argued, that every species of property from which the landlord receives an annual income, is liable to be rated; because it must be presumed that the landlord lets it for so much the less under the idea of its being rated. But it may be said on the other hand, that where the property is in possession of the *Crown*, the rent is paid by the public; and though it is stated in this case that so much is deducted out of each man's pay for the accommodation of the horses, yet in order to enable them to pay that rent, the public allow them the greater pay: and were it not for that deduction, the public would give each man so much the less; so that eventually it is paid by the public. This property, therefore, must be considered as in the occupation of the public, and is not rateable to the poor. — *BULLER J.* The question is, Whether the plaintiff is or is not *the occupier* of these premises? There is no case which is exactly applicable to the present. It has been contended, that the plaintiff is the occupier, because he is the lessee of the stables. But it appears on this case, that he did not contract as a general lessee; and it is material to consider the effect of *THE SIGN MANUAL*. It appears to us, that the plaintiff acted merely for the benefit of the public, by order of the *Crown*: he contracted by leave of the *Crown*, and is like a trustee for the public, deriving no benefit whatever to himself from the contract. For if he had acted for his own benefit, there would have been no occasion for the sign manual. Besides, it appears that, in point of fact, so far from the colonel's making use of these stables, his horses have never stood there. So that in no point of view whatever can the plaintiff be considered as the occupier. — *GROSE J.* declared himself of the same opinion. — *Postea* to the plaintiff.

The profits arising by tolls from a navigable canal are rateable to the poor. *Vide* this case, *ante*, pl. 190.

Fish are titheable by custom; and the proprietors of such tithes are liable to be rated to the relief of the poor.

189. *Rex v. The Undertakers of the Aire and Calder Navigation*, M. T. 29 G. 3. 2 T. R. 660. — The churchwardens and overseers of L. by an assessment duly made and allowed, assessed the undertakers of the navigation of the rivers *Aire* and *Calder* for the tolls and duties of the navigation at L., at and after the rate of 1000*l.* per annum; and for their lands, wharfs, houses, warehouses, and other buildings in their own occupation; at and after the rate of 27*l.* per annum. Against the former part of the assessment the defendants appealed to the Sessions: and after argument the rate was affirmed.

190. *Rex v. Carlyon*, T. T. 29 G. 3. 3 T. R. 385. — The appellants were the proprietors of the *tithe sheaf* of the parish of *Paul*, and also of one tenth of all fish taken, or caught, and brought on shore within the parish; and that they and their tenants were rated as follows: —

	£	s.	d.
T. C. and Mrs. V., the rectorial tithe of pilchards	0	19	10½
E. P. (who was a tenant to the appellants), for the tithe of the hook-fish, and all other fish, except pilchards and herrings, in the village N., which lies in the parish of <i>Paul</i>	0	5	3½
B. H. and Co., (who were also tenants of the appellants), for the tithe of hook-fish, and all other fish (except pilchards and herrings) in M., also within the said parish	0	2	4
J. G. (who was also tenant to the appellants) for the tithe of sheaf	0	5	10

The only question made was, concerning the rateability of fish; and this property having been always rated in the parish of *Paul*, and being a property yielding a certain annual profit, the Sessions were of opinion that it was rateable, and confirmed the rate. — LORD KENYON C. J. This question is decided by the express terms of the 43 *Eliz. c. 2.*, which, after mentioning parsons and vicars in the number of the persons who are to contribute to the relief of the poor, enumerates (among other things) *tithes impropriate* and *appropriations of tithes*, in respect of which the rate is to be made. And indeed the spirit of the law coincides with the words of this statute. For the legislature intended, that when rates are made for the relief of the poor, every person should contribute according to the benefit which he receives within the parish. Here the parties receive a certain benefit arising from the tithe of fish in this parish, and run no risk whatever. Then it is said, that only property which is *visible* should be rated: but I think that is carrying the rule of exemption too far; for oblations and other offerings, which constitute the rectorial or vicarial dues, are rateable. — BULLER J. Supposing the fishermen are not rateable for the fish caught, the case of *Rowls v. Gells* (a) governs this. For though the owner of lead-mines is not liable to be rated for them, yet his lessee, who runs no risk is rateable in respect of the profits arising from *lot* and *cope*. So here the persons entitled to the tithe of fish run no risk, and their profit is certain; therefore for that certain profit I think they are liable to contribute to the poor-rates. — Rate confirmed.

(a) *Ante*, pl. 169.

Where the Sessions found that he master gun-

191. *Rex v. Hurdis*, M. T. 30 G. 3. 9 T. R. 497. — The case: The appellant objected to the rate, because W., gunner of His

Majesty's fort and battery at S., who was a servant to His Majesty, and not in his own right the occupier of the dwelling-house thereto belonging, and who therefore ought not to have been charged in the rate, was inserted therein, and charged as the occupier of the battery-house. *W.* was taxed for the battery-house ten shillings. At the time of making the rate he was and still is a head or master gunner, and acted as such in the fort or battery of S. The fort and battery-house are the property of the Crown. A master gunner is a warrant-officer appointed and removeable at pleasure by the master-general of the ordnance, though his office is usually considered as a provision for life. *W.* being so employed in the fort, occupied the whole of the house, except one room, which is allotted to the under-gunner by direction from the ordnance; and the furniture of this house belonged to *W.* The inhabitants of the town, port, or parish, paying to the poor-rate thereof, have a right to vote in the election of members of parliament for the town and port; and the appellant is an inhabitant of that description. — LORD KENYON C. J. I do not feel that my opinion upon this subject militates against any decided case; but I shall determine upon the ground of positive law, as it is laid down in the 43 *Eliz. c. 2* which subjects every occupier of lands, houses, &c. to be rated to the relief of the poor. Now it is expressly stated in the case, that *Wood* was the occupier of the battery-house: and though it might perhaps have been contended below that he was not the occupier, in the legal sense of the word, yet the finding of the Sessions precludes that question here. It is not, however, a general position, that a servant of the Crown occupying a house in respect of his office is not rateable for it; for I was always rated for the house which I had as Master of the Rolls; and so are the Auditors and Tellers of the Exchequer. Soldiers indeed cannot be said to be occupiers of their barracks, in the legal signification of the word; they are no more than mere servants. And in the case of *Lord Amherst v. Lord Somers* (a), it appeared that the former was not the occupier of the premises rated. — ASHURST J. Wherever persons are stated by the Sessions to be the occupiers of crown-lands or houses, they must be rated; though such property would not be rateable in the hands of the King himself. In the same manner, though hospitals, or lands held for their immediate purpose, are not rateable, yet if any officer of such establishments hold part of the hospital lands for his own convenience, then he becomes rateable; as in the case of *Ayr v. Smallpace* (b), where the plaintiff, who was comptroller of *Chelsea College*, and resided in the comptroller's apartments, was held to be rateable as the occupier. Now *W.* was the occupier in this case; and though he had not a life-interest, yet it is well known that such persons are never dismissed unless for misbehaviour; and even if he were to be considered as a mere tenant at will, that will not vary the case. The other judges concurring, the rate was confirmed.

ner at *Seaford* was the occupier of the battery-house, which was the property of the Crown, and from whence he was removeable at pleasure, the King's Bench held, that that fact fixed his liability to be rated.

(a) *Ante*, pl. 188.

(b) *Ante*, pl. 154.

192. *Rex v. St. Agnes*, M. T. 30 G. 3. 3 T. R. 480. — The case: A, as trustee of *J. E.*, is entitled to a certain dish or measure arising out of certain lands and tin bounds in *St. Agnes*, called *toll and farm tin*; the said *toll* is one 15th part of all the tin gotten in the lands of *J. E.*, within the parish of *St. Agnes*; and which said *farm tin* or *due* is one 12th part, after the said 15th part is deducted, for *toll* of all such tin so gotten within the tin bounds in

A person entitled to *toll tin* and *farm dues*, is liable to be rated to the poor in respect thereof.

the parish; and which said dues or duties are due and payable by the laws and customs of the stannaries of C., free and clear of all risk and deduction whatsoever: but they are uncertain, and vary every year; yet for many years last past have produced a considerable sum annually. *N. D.* is entitled to a certain dish or measure called *toll or tin dues*, arising out of certain lands in *St. Agnes*, and due and payable in the manner before stated; and which toll varies, and is uncertain; but also produces a considerable sum annually. The said *A.* and *N. D.* not having been respectively rated to the poor for the *fee-farms of tin*, and the *toll tin* arising as above stated in *St. Agnes*, the Sessions on appeal (a) *Ante*, pl. 169. quashed the rate; and now the case of *Rowls v. Gell* (a) was cited as deciding this question. — LORD KENYON C. J. said, he approved of the case of *Rowls v. Gell*. — And the rate was confirmed.

An exemption, in a private statute of lands given to charitable purposes, "from all public taxes, charges, and assessments whatsoever, civil or military," extends to the poor's rate.

193. *Rex v. Scott*, *E. T.* 30 G. 3. 3 T. R. 602. — The case: *W. A.* having conveyed in fee a free-school and two houses in *N.* for the residence of a master and usher, with a considerable estate at *K.*, in the county of *S.*, for the support of the same, and vested the same in the *Haberdashers' Company* in *London* as trustees, a private act of parliament was passed in the 12 *Car. 2.*, intituled, "An act for the incorporation of the master and wardens of the "Company of Haberdashers, *London*, to be governors of the "free-school and almshouses in *N.*, in the county of *S.*, of the "foundation of *W. A.*, and for settling lands and possessions on "them for the maintenance thereof, and other charitable uses;" which was confirmed and perpetuated by the 13 *Car. 2.* By the act of 12 *Car. 2.* after reciting that *W. A.* had out of a sincere intention for public good at his own expence erected the said school-houses for the master and usher, and four almshouses in *N.*, and for other pious and charitable purposes (among other things), it was enacted, "That the manor and grange of *K.*, with "the appurtenances, and all other lands and hereditaments, "settled and conveyed by *A.* to the governors and their successors for the purposes aforesaid, be, and at all times hereafter "shall be freed, discharged, and acquitted of and from the payment "of all and every manner of taxes, assessments, or charges, civil or "military, whatsoever, hereafter to be laid and imposed by authority of parliament or otherwise, and the said manors, messuages, "lands, tenements, and premises, and the owners and occupiers "thereof, or any of them, shall not at any time hereafter be rated, "taxed, or assessed, to pay any sum or sums of money, or be "otherwise charged in any way whatsoever for or in respect of "the said manors, lands, and hereditaments, or any of them, for "or towards any manner of public tax, assessment, or charge "whatsoever; any statute, law, or ordinance to the contrary "thereof in anywise notwithstanding." The premises had not been rated or paid to the relief of the poor of the parish in the memory of any person living. — LORD KENYON C. J. These lands having been given for eleemosynary purposes, the legislature seem to have intended to exempt them from all public taxes whatsoever: and it is immaterial to the parish whether these lands be exempted from the poor's rate or not; since, if they be not exempt, greater contributions must be raised. If a construction of this act of parliament manifestly erroneous had hitherto prevailed, we should have been bound to correct it; though, indeed,

had the words of the statute been very doubtful, the cotemporary and subsequent uniform usage would have had great weight. But without resorting to the usage in this case, the words of this statute are very clear and positive; for they speak of all *public taxes whatsoever*. The whole argument resolves itself into this, Whether in the idea of the legislature at the time of passing this act of parliament the *poor's tax* was a *public tax*? The acts of parliament, which have been referred to in the argument, do not prove the point for which they were mentioned (a); but the other acts of parliament respecting the poor are decisive of this question. The statute of 3 W. & M. c. 11. § 6. speaking of the means by which a settlement may be gained, says, that "if any person shall be charged with and pay his share towards the *public taxes* or *levies* of the said parish, he shall be adjudged to have a legal settlement in the same." Now, on the construction of this statute, it never was doubted, but that a payment towards the *poor's rate* was sufficient to give the party a settlement; I am therefore clearly of opinion, that the exemption which has hitherto prevailed ought to continue in future.—The three other judges concurred; and the rate was quashed.

194. *Eddington v. Borman*, M. T. 31 G. 3. 4 T. R. 4. — The case: The plaintiff is an inhabitant and occupier of a dwelling-house situate in the parish of St. A., which house stands on the ground which was formerly part of the ground and soil of the river Thames, inclosed and embanked in pursuance of, and paying the quit-rent imposed by, the 7 G. 3. c. 37.; which house was built thereon after the making of the said embankment. The defendant regularly distrained the plaintiff's goods for not paying a rate made under the 11 G. 3. c. 29. intituled, "An act for consolidating, extending, and rendering more effectual, the powers granted by several acts of parliament for making, enlarging, amending, and cleansing the vaults, drains, and sewers, within the city of London, and for paving, cleansing, and lighting the streets," &c. The former occupier of the plaintiff's house, which was occupied only for a short time before the year 1788, was assessed to and paid the *poor's rate*, as also the house-tax, commutation-tax, consolidated-rate, church-rate, tithes, watch and orphan's tax: and the present occupier has in like manner been assessed to, but has resisted the payment of, all such rates, upon the ground of his being exempt therefrom by the 7 G. 3. c. 37. The plaintiff's house has been regularly assessed to the land-tax, but the payment thereof has been resisted, and is now in litigation. The street, place, or square, in which the plaintiff's house is situate, has been regularly paved, cleansed, and lighted by the commissioners, under the authority of the act of the 11 G. 3. c. 29.—LORD KENYON C. J. This question seems concluded by the last case; in that the difficulty arose from the circumstance of the land-tax being an annual act; and that the act under which the distress was taken, was passed subsequent to the statute containing the exemption. But this act of parliament, in describing the persons who are liable to be rated, refers to the poor-rates, which have existed ever since

Houses built on land embanked from the Thames, in pursuance of the 7 G. 3. c. 37. are not liable to be assessed to rates made under the 11 G. 3. c. 29.

(a) 10 Ann. c. 23. 12 Ann. c. 5. the *poor-rate*, they have done it by 18 G. 2. c. 18. to prove that whenever express words, as contradistinguished the legislature have intended to include from public taxes. 3 Term Rep. 604.

Elizabeth's time, as well as to the land-tax; nor is there any foundation for the argument, that the occupiers of houses are liable though the lands be exempted. The statute 7 G. 3. c. 37. enacts, that the lands to be inclosed and embanked shall vest in the owner, &c. "*free from all taxes and assessments whatsoever.*" If then the lands themselves be exempted, so must also the houses built thereon. — PER CURIAM : *Postea* to the plaintiff.

The owner of stables in the parish of *Marybone*, rented by the colonel of a troop of horse, by the authority of the king, for the use of the troop, is liable to be assessed for them to the rates collected in that parish under the 10th of G. 3. c. 23.

See the case of *Lord Amherst v. Lord Somers*, ante, pl. 188.

195. *Eckersall v. Briggs*, M. T. 31 G. 3. 4 T. R. 6. — The case: By indenture of lease, dated 22d of September 1787, between the plaintiff of the one part, and L., captain and colonel of His Majesty's first regiment of life-guards, of the other part, (reciting that His Majesty, by his sign manual, had been pleased to direct and authorise L., on His Majesty's behalf, to accept and take a lease of the stables, riding-house, and premises therein-after mentioned for twenty-one years,) the plaintiff demised all those stables and riding-house then and now occupied by His Majesty's first regiment of horse guards, situate on the east side of *Portman Street, Marybone*, with the appurtenances, to hold to L. and the captain and colonel of the troop for the time being for twenty-one years, at the yearly rent of 273*l.* 11*s.* 9*d.*, payable to the plaintiff quarterly, clear of all taxes, rates, charges, and assessments, then charged, or at any time thereafter to be charged on the said stables, or on the rent, or on the plaintiff in respect thereof, or on L., or on any other colonel of the regiment for the time being, in respect of the premises by authority of parliament or otherwise howsoever; and L. COVENANTED to pay all the said taxes, rates, and assessments. The horses belonging to the troop are kept in the stables and riding-house, and are attended and taken care of by the soldiers of the regiment; no person resides at the stables, nor is there any room or apartment therein for any such purpose; but a corporal's guard of four men belonging to the regiment sit up with the horses during the night. The rent of the stables is paid by the agent of the regiment out of the money voted by parliament for army services; the fund allowed for the regiment is accounted for by the colonel; and if any saving arise from the regiment not having their full complement of men or of horses, such saving reverts back to the public, and is applied in payment of army services. The plaintiff was rated and assessed at 22*l.* 3*s.* 7*d.* by the commissioners for putting in execution a certain act of the 10 G. 3. c. 23. intituled, "An act for the more effectual paving, repairing, &c. the streets, &c. within the parish of *Marybone*," as the owner of the said stables and riding-house, for and towards the purposes of paving, &c. for one year, ending the 31st of December 1788. The question is, Whether the plaintiff be liable to pay the rate under the act of parliament? By section 93, it is enacted, that "one or more rate or assessment shall, for the purpose of repairing, &c. the streets, &c. be made upon all and every person and persons who do or shall inhabit, use, occupy, possess, or enjoy, any land, ground, house, shop, warehouse, coach-house, stable, cellar, vault, building, tenement, or hereditament, in any of the said squares, streets, &c. By section 105, "Forasmuch as it is reasonable that all public buildings, and all dead walls, and void spaces of ground, shall be rated and assessed in a due proportion towards the paving, &c. it is hereby further enacted, that it shall and may be lawful to and for the said commissioners,

"at their discretion, and they are hereby required, from time to time, to rate and assess towards the purposes of this act all parish-churches and parochial and other chapels, schools, markets, warehouses, and all other public buildings whatsoever, charged or not charged to the land-tax, situate, &c. in any square, &c. within the limits aforesaid, which now is or are, or hereafter may be, built or in building, at a rate not exceeding, &c. And (after directing that the churchwardens shall be rated for parish-churches) the rate or rates, assessment or assessments, to be made and paid for any other chapel, meeting-house, school, market, warehouse, or other public building, dead wall, or void space of ground, shall be paid by the respective owner or owners, proprietor or proprietors thereof, and shall be charged and chargeable on the said premises, and be recovered and applied in such manner as other rates and assessments are directed to be recovered and applied by this act." — LORD KENTON C. J.

The words in the first clause, which have been commented upon, and which expressly charge the occupiers with this rate, are, to be sure, extremely general, and would comprehend all sorts of landed property, were they not restrained by the subsequent provisions of the act; for they mention "land, ground, house, shop, warehouse, coach-house, stable, cellar, vault, building, tenement, or hereditament." But as it was intended to impose the rate on every species of landed property within this district, and as it was foreseen that difficulties would arise in many instances respecting the persons who could be said to occupy particular buildings, the legislature, in order to obviate such difficulties, provided by the subsequent clause that the rates on chapels, warehouses, and other public buildings, should be paid by the owners or proprietors. The question then is, What is meant by public buildings? and that may be answered by saying that those are public which are applied to public purposes. A warehouse may be rated to the proprietor, or the occupier, according to the use to which it is applied. If it be let, for instance, to the excise or custom-house for public purposes, the burden must be borne by the proprietor: but if it be afterwards converted to a private use, the occupier of it will be liable to this rate. So here the stables in question are used for a public purpose by the horse guards, in contradistinction to private occupation; and as long as they continue to be used for this purpose, there is no private occupier of them. On this ground proceeded the case of *Lord Amherst v. Lord Somers* (a), (with which decision I perfectly coincide,) where *Lord Amherst*, as colonel of the second troop of horse guards, was held to be exempt from the payment of the poor-rate imposed upon some stables occupied by the horses belonging to the troop. *Lord Amherst* could not in any sense be considered as the occupier, so as to be liable to be rated, neither could the soldiers. So here, whilst these stables continue to be used by the guards, they cannot be considered to be in the private occupation of any one, but are public buildings within the meaning of the latter section of the act. And that clause cannot be confined (as has been contended) to subjects not enumerated in the former one; because then it would have no operation whatever, since the former section mentions "hereditaments," which includes every species of landed property. —

AMHERST J. It clearly was the intention of the legislature, when

(a) *Ante*, pl. 188.

this act of parliament was framed, that no real property within this district should be exempted from the rates imposed by it. The property must be charged to some person or other. If it be occupied by *private persons*, the rate must be paid by the occupier; if converted to a *public purpose*, by the proprietor. But the same buildings which have been occupied by private persons, may become public buildings within the meaning of this act of parliament, from the kind of occupation. Now here *L.* cannot be considered as the occupier of these stables, because they are converted to a public purpose; then it follows that, as these buildings are liable in the hands of some person, the *onus* must fall on the proprietor, by the latter section of the statute: if they should hereafter be in private occupation, the rates must again be paid by the occupier. — *BULLER J.* I confess that, when I first read this case, it struck me in a different light: I thought that the words in the latter clause meant *buildings which were in their nature public*; and that "all other public buildings" following "*chapels*," &c. meant buildings *ejusdem generis*. But I now think, that the construction which has been put on the statute is the true one; and that whether a building shall be considered as public or private, must depend on the use to which it is applied. The observation which my Lord has made on the term "*warehouse*" seems decisive. — *GROSS J.* The ground upon which we decided the case of *Lord Amherst v. Lord Somers* was, that the stables were considered as the stables of the public. Now in this case the legislature intended that the proprietors of buildings which are used by the public should pay all rates imposed on them by virtue of this act; and they have expressly charged such proprietors by the latter section. — *Postea* to the defendant.

A barge-way and toll-gate in the hamlet of *Hampton-Wick*, purchased by the city of *London*, by virtue of the 17 G. 3. c. 18. (an act passed for more effectually completing the navigation of the *Thames*, and empowering the city to levy tolls and duties towards the charges of the navigation.) are rateable towards the relief of the poor in that hamlet, for such part of the tolls as becomes due there, notwithstanding the tolls are col-

196. *Rex v. The Mayor of London, M. T.* 31 G. 3. 4 T. R. 21. — The defendants having been rated for the barge-way and toll-gate in the hamlet of *H.*, appealed against the same to the Sessions, who confirmed the rate, subject to the opinion of this Court on the following case: *H.* is a vill maintaining its own poor. The appellants by virtue of the statute 17 G. 3. c. 18. and out of the fund provided by that act, purchased from Sir *W. D.* an ancient barge-way, or towing-path, within the said hamlet, upon the bank of the *Thames*, and certain ancient tolls and duties, payable in respect of horses drawing barges along the same; and such barge-way and tolls were in *January 1778* conveyed to the appellants for the purposes of the act. The appellants have leased the herbage and pasture of the barge-way or towing-path to *S.* at an annual rent of 30*l.* 10*s.*, which is expressly appropriated to the use of the navigation; and their lessee is in the occupation of the herbage and pasturage so leased to him, and pays the several rates for the same. Immediately on the purchase and conveyance, the tolls upon barge-horses were in pursuance of the direction of the act discontinued, and ever since that time the new tolls authorised by the statute to be collected in lieu thereof have been taken by the appellants for all barges and other vessels navigating the river between *London Bridge* and the *City stone above Staines Bridge*, according to the quantity of tonnage. Barges and other vessels are daily navigated on that part of the *Thames* which is within the hamlet, and adjoins the barge-way; and, under the authority of the act, an additional toll of one halfpenny per ton

becomes payable and is paid to the appellants for every barge or other vessel navigating upon the river beyond *K.* or *H.*, and towed along the barge-way to *D.*, *M.*, or *H.*, within part of which limits the barge-way in question is included; and barges from *London* frequently stop and unload within the limits of the barge-way. None of the new tolls are actually received within the hamlet of *H.*; but the whole of them collected by the appellants' appointment at *S.*, below *K.* Sir *W. D.* and his ancestors, previous to the above purchase and conveyance, were always assessed to the land-tax, poor's rate, and other taxes for the barge-way and ancient tolls, and constantly paid all such assessments up to the time of such purchase and conveyance; and from the time of such purchase and conveyance the appellants have been regularly assessed in respect of the barge-way and tonnage; and the land-tax and poor's rate have been several times demanded by the officers of the hamlet, but the appellants have never paid the same. The whole interest which the appellants have in the tolls is derived under the before-mentioned act, and purchased under the authority thereof. And the rates appealed against have been duly made, allowed, and published according to law. The act of the 17 G. 3. c. 18. is intitled, "An act for enabling the mayor, &c. of *London* to purchase the present tolls and duties payable for navigating upon the river *Thames* westward of *London Bridge*, within the liberties of the city of *London*, and for laying a small toll in lieu thereof, for the purpose of more effectually completing the said navigation; and for other purposes." The act states, that great expences have been already incurred by the city for improving the navigation under the 14 G. 3.; that further sums of money were necessary to be laid out, over and above the annual expences; and it enables them to purchase lands and the several tolls and duties collected for the navigation of barges, and for horses drawing the same; that, immediately after the purchase of such tolls and duties, those tolls and duties should cease; and then it enacts, that "in consideration of the great charges and expences the said mayor, &c. will be at in improving and completing the said navigation, and for keeping the works in repair, and in purchasing the tolls and duties now collected and taken for barges and other vessels navigating, and for horses drawing, &c. it shall and may be lawful to and for the mayor, &c. to take for all barges, &c. which shall be navigated upon the said river between *London Bridge* and the City Stone above *Staines Bridge* (except as is herein-after mentioned), such sums of money in the nature of a toll or duty as the said mayor, &c. shall think proper, not exceeding the tolls and duties herein-after mentioned." It then stated the tolls which might be taken from *London Bridge* to several other places up the river as far as *Staines*, amongst others to *H.*, 2*d.* per ton; to *Staines* and upwards, 4*d.* per ton. It also gives the city power to collect the tolls where they please. It then requires, that "an account of the said tolls and duties granted by the act be annually laid before parliament." It then recites, that the money to be collected by the receipt of the tolls or duties to be made payable by virtue of this act will not be sufficient for the purpose of the act and of the 14 G. 3. &c. and then gives power to the city to raise money upon the security of the tolls.—In support of the order of Sessions it was con-

lected in another parish.

tended, 1st, The corporation of *London* are in the eye of the law the occupiers of this property, and are therefore liable to be rated for it. 2dly, The subject-matter is rateable. And 3dly, The tolls in respect of which the defendants are rated became due within the hamlet of *H.* — On the other side it was contended, 1st, That the defendants were not rateable at all for this property. 2dly, That they were not rateable in *H.* — LORD KENYON C. J. From the time when I first read this case to the present moment, I confess I have had no doubt on this question. It appears that some years ago Sir *W. D.* was seised of a close called *The Barge-way*, and from persons who passed over it he received tolls; it afterwards became necessary for the city of *London*, as conservators of the river *Thames*, to get possession of this barge-way, lying in *H.*; and accordingly they acquired the ownership and possession of this land by virtue of the act of parliament 17 G.3. c. 18. It seems to me that the difficulty which has been made has arisen from not considering *what* is rated; it is not a rate on the tolls, but the close of land called “*The Barge-way*” and “*The Toll-gate*.” Now the questions are, first, Whether this property is or is not rateable? and, secondly, Who should be rated for it? First, the subject-matter of the land is real property; it is land, tenement, or hereditament; and it is liable to be rated, unless it be so circumstanced that there is no occupier on whom the rate can be imposed; as in *Lord Amherst v. Lord Somers* (a), the case of *St. Luke's Hospital* (b), &c. But here the city of *London* are the occupiers; for the case expressly states that *Spencer's* interest is confined to the herbage and pasturage; and, therefore, if any injury were done to the soil, the defendants might maintain trespass for it. Where there is no actual possession in another person, the possession follows the property. It is not necessary that there should be a manual occupation every day; as in the instance of the waste of a manor, for injuries done to which the lord of the manor may bring trespass. And in this case there is no doubt but that the city of *London* are in the actual occupation of this property, for persons navigating on the river pay them for the right of passing along the towing-path. It is not necessary for us to say how much the city should be taxed in one parish, and how much in another; it is sufficient for us to say that they have the inheritance and ownership of the soil, which is the subject-matter of the rate: if they be rated too much, their remedy is by appeal to the Sessions. — BULLER J., after observing that the thing rated was the barge-way and toll-gate, said, that there were two questions; the one, Whether the thing rated is or is not in its nature liable to be rated to the poor? the other, Whether it is exempted on account of the use to which it is applied? With respect to the former, it is an interest in the soil, lying in *H.*, in respect of which they take tolls, some of them payable in that district, and some in other parts. It is not necessary for us to determine whether they are liable to be called on in this district for a proportion of the tolls arising on one entire voyage from *London* to *Staines*; it is sufficient, for the decision of this case, that some of the tolls are due for navigating to *H.* If tolls were to be divided for the purpose of rating them in different parishes, it would create great confusion; but it has been settled in a variety of cases, particularly in *Rex v. The Aire and Calder*

(a) *Ante*, pl. 188.(b) *Ante*, pl. 157.

Navigation (a), and *Rex v. Cardington* (b), that the party is to be rated for tolls where they become due. The Court, in deciding those cases, proceeded on the principle, that the owners were not entitled to receive the tolls till the vessels arrived at a certain place; and where those tolls are due, there the party is rateable. It is immaterial in what place they are received; for if, in this case, the defendants received them at *Guildhall*, they could not be rated for them in *London*, but at *H.*, where they became due. As to the other question, the defendants are in possession of this property, and are therefore *prima facie* liable to be rated for it; if they be entitled to any exemption, it is incumbent on them to show it. Now it has been objected that they are not liable to this rate, because they hold it on a *public trust*; but, in the first place, it does not appear to be the case of a trust at all; and if it did, perhaps the consequence contended for would not necessarily follow. Before this act of parliament passed, the defendants were the conservators of the river *Thames*; now we are not sufficiently informed by this case whether they were or were not under any obligation to cleanse and repair the river; and if they were, this act was passed in ease of their burden; but whether they were or not is perfectly immaterial, for they are found in possession of this property which is rateable, and it is not stated negatively that they are not the *beneficial* owners of it.—GROSE J. The question before us is not whether or not the city of *London* is rated too high, but whether they are properly rated for that which is the subject of the rate. Now the rate is on the burge-way and toll-gate; and it appears from the case that the soil is in the defendants, and not leased out, as it was in *Rex v. Jolliffe* (c); the soil therefore remaining in them, they are properly assessed for it. The next consideration is, Whether the city of *London* is rateable in this district? It is stated in the case that 2*d.* per ton is due for goods landed at *H.*; something therefore is rateable to the poor in this place; and if we were to determine that the defendants are not liable for that in *H.*, we should in effect overturn the case of *Rex v. Cardington*. (d) The remaining question is, Whether the city of *London* are trustees of this property for the benefit of the public? On this I confess I had some doubt at first, but the manner in which my brother BULLER has put this question removes all difficulty; for, finding the defendants in possession of some property, and that property rateable, they should have shown that they were trustees for the public; but not having done so, they must be rated for it.—Rate confirmed.

(a) *Ante*, pl. 130.(b) *Ante*, pl. 172.(c) *Ante*, pl. 187.(d) *Ante*, pl. 172.

197. *Rex v. St. Mary the Less* (e), *M. T.* 32 G. 3. 4 *T. R.* 477. —E. appealed against a poor-rate, in which he was assessed for a house and garden at 2*4*l. a year. In August 1783, the appellant purchased the premises for 385*l.* and afterwards repaired the same; but neither he nor any other person has since such purchase inhabited or resided in the dwelling-house, except as hereafter mentioned, but the keys of the house always remained in his custody. The appellant resides part of his time in his prebendal-house in the college at *D.*; during which residence he frequently for his own amusement uses a throw or lathe, and other turning instruments, in one of the rooms of the dwelling-house in question for an hour or two in a day, and has three chairs and a table in

A house and garden, one room of which occasionally used for amusement, another room for keeping lumber in, &c. is rateable to the poor.

(e) See *Rex v. Aberystwith*, *post*, pl. 224.

that room ; on many of those occasions he has been attended by a whitesmith and cutler to sharpen his tools, and assist him in his work ; occasionally in the *Winter* season there has been a fire in that room, and in another of the rooms he has frequently kept corn for his horse ; and these two rooms have been so used occasionally in the course of the present year. The appellant occupies the garden, and keeps a gardener to take care of that and another garden. And it was proved on the part of the appellant, that the garden in question was worth 40s. a year, at which rate he was willing to be rated for the same. The gardener sometimes puts his flower-pots, shrubs, &c. and some of his working tools, into another part of the dwelling-house, where other lumber belonging to the appellant is also sometimes put by his servants : but no person has ever slept or lodged in the dwelling-house, nor has any household furniture (except as above) been kept therein since the appellant purchased the premises ; except that the appellant has out of charity permitted a poor man and his wife to occupy and live rent free in the kitchen, between which and the rest of the house the door communicating was stopped up. The stable has not been occupied for any purpose whatever for upwards of two years, and has been for that time unfit to be used as such : but the appellant in the hunting season of the years 1787, 1788, and 1789, made use of it, and a small yard annexed to it, as a kennel for his hounds. It further appeared, that about five years ago a person offered to take the premises in question for 25l. a year, which was refused. — THE COURT was of opinion that he was properly rated for the whole house.

The tolls arising from a navigation which are directed by an act of parliament to be applied to public purposes, are not rateable to the poor.

(a) See *Rex v' Sculcoates*, ante, pl. 101.

198. *Rex v. Salter's Sluice Navigation* (a), *T. T.* 32 *G.* 3. 4 *T. R.* 730. — The case : In that part of the parish of *S.* which is within the isle of *Ely*, a certain sluice was erected in the year 1640, called *S. Sluice*, and was supported by the corporation of the *Bedford Level*, as a work of drainage only, across a navigable river called the river *N.*, to prevent the water's running down the said river, and to turn the same down a new cut, called *M.* In the year 1753, it was found necessary to apply to parliament for an act to improve the navigation of the river *N.* ; and accordingly in the 25th of *G.* 2. an act was obtained for improving and preserving the navigation from *Salter's Load Sluice* in *Norfolk* to *S. Sluice*, &c. ; in which certain tolls were made payable at the said *Sluice*, in the parish of *S.*, by every person who should carry or convey any goods through it up or down the river. The tolls are collected at the sluice by an officer resident there, and appointed by the commissioners under that act ; and they are by the said act vested in the commissioners, and directed " to be applied and " disposed of for the several uses and purposes of the said act, and " to no other use or purpose whatsoever." The commissioners have borrowed upon mortgage of the said tolls, with other tolls arising upon the said navigation, 10,000l. ; eight years' interest of which is now in arrear. The tolls arising from such navigation amount to 50l. per annum. — LORD KENYON C. J. delivered the opinion of the Court : It is not sufficient to point out property within the parish, in order to show it is rateable to the poor ; but there must also be some person or persons in the beneficial occupation of it : I say persons, because corporations may unquestionably be rated, though it was once thrown out by *Yates J.* ; that they could not.

Now in the present case there is property, which is the subject of a rate; but there is no occupier of it. The trustees have a bare naked trust, not coupled with any interest. If any interest resulted either to the commissioners, or to the owners of the adjoining land, after the public purposes of the act were answered, these tolls might have been rated. But it is admitted, that all the money which is collected under this act of parliament must be expended for the purposes of the act; and therefore upon the ground upon which the Court proceeded in *Rex v. St. Luke's Hospital* (a), namely, that there was no occupier, these commissioners are not liable to be rated. This case is distinguishable from *Rex v. The Dock Company of Hull* (b), *Rex v. The Mayor, &c. of London* (c), and all the other cases mentioned in the argument, on the ground I have stated, that the commissioners are mere trustees to superintend the execution of this act, without any personal advantage. In the *Hull* case the owners of shares received great profits; and in the *Hampton-Wick* case, there was a surplus value of the land belonging to the corporation of *London*, which was rateable in their hands. — Rate quashed.

(a) *Ante*, pl. 157.(b) *Ante*, pl. 184.(c) *Ante*, pl. 196.

199. *Rex v. White* (d), T. T. 32 G. 3. 4 T. R. 771. — S. W., A. W., I. L., T. L., W. C., R. D., and W. S., inhabitants in the parish of St. J., appealed against a rate, alleging that neither they or either of them had any property liable to be rated, &c. It appeared on the rate that it was a rate of 1d. in the pound on all lands, and 3d. for every 100l. of personalty. It was proved that it was usual in that parish to rate the inhabitants towards the relief of the poor for their personal property within the parish, in the following proportion, viz. on a calculation that every 100l. of which any inhabitant was possessed, did or might produce interest to the amount of 3l. per annum, such interest at 3l. per cent. per annum being considered as a test of the ability of such person; and such person is charged in the sum of 1d. for each pound of such supposed interest. That it was usual also within the parish to rate all officers in the army, navy, customs, or excise, being inhabitants of the parish, according to a supposed ability arising from their several and respective salaries. S. W. was rated according to the proportion before stated in the sum of 13,500l. for his personal property, which consisted of certain ships or vessels employed in carrying on the *Newfoundland* trade from the port of *Poole*, in the parish of St. J., in the town and county of *Poole*, and monies vested on real securities, the lands on which the same were charged lying out of the parish of St. J. A. W., widow, was assessed for a personal property within the parish in the sum of 1000l. according to the proportion before stated; such personal property consisting of principal money to that amount. J. L. was rated for his personal property in the sum of 200l. He was collector of the customs payable at the port of *Poole*; he had no personal property, except his salary, payable to him as such collector, and which he received by an order of the commissioners of His Majesty's customs, in the parish of St. J. T. L. was assessed for his personal property in the sum of 100l. He was a captain of His Majesty's navy, and had no other personal property but his pay, as captain in the navy, which was paid to his agent in *London* for his use, and the household goods and furniture of the house in

Ships and stock in trade are rateable to the poor; but household furniture, money out at interest, officers and sailors pay, and the salaries of clerks in the customs and in trade, are not.

(d) See *Rex v. Jones*, post, pl. 219. *Rex v. Ambleside*, post, pl. 230. *Rex v. Justices of Sussex*, post, pl. 299.

which he lived in the parish of *St. J.* *W. C.* was rated for his personal property in the sum of 100*l.* He was a clerk to a merchant then an inhabitant of the parish, and had no personal property except his pay as such clerk, and which he received from a merchant in the parish. *R. D.* was rated for his personal property in the sum of 100*l.* He was master of a merchant-vessel trading from the port of *Poole* to other parts, and had no personal property but his pay, which he earned as such master of a vessel, and which he received in the parish of *St. J.* *W. S.* was rated for his personal property in the sum of 300*l.*; such personal property consisting of stock in trade as a shopkeeper. — LORD KENYON C.J. This is a question of great difficulty, and of vast importance to the public. The statute of *Elizabeth* was passed to enforce (what are called) duties of imperfect obligation. For it was a duty, before that statute was made, to relieve the poor and necessitous. And the provisions of that act were adapted to the enforcing of those duties in the only way in which they could be enforced, namely, by raising a fund from persons who are deemed competent to pay it; and in the case in *Bulstrode* it was said, that the rate should be on persons in respect of visible property, locally situated within the parish. (a) Then apply that rule to these cases. First, as to the ships, I think that they are rateable; this parish is their home, and must be so considered for the purposes of the register act. (b) With regard to the money lent on real securities, I think that it cannot be rated; for it is stated that the money was lent by persons out of this parish on landed securities elsewhere. This therefore is not personal property in the parish; and I am not prepared to obviate the difficulty of such a person residing in two parishes. In the act of parliament which imposes a tax on horses and servants, the legislature have guarded against this difficulty, by directing the person, liable to the duties, to give an account to the collector of the number for which he pays in any other parish: but there is no such provision for this case. I have doubted a great deal, in the course of the argument, on the case of the person rated for 1000*l.* in specie: but the inclination of my opinion is that she is rateable for this, because it is stated to be property within the parish, and it may be productive, if the owner choose. For the same reason, I think that the household furniture is not rateable, because it produces nothing; the party might as well have been taxed for his clothes: for a house indeed the occupier must be taxed, because the legislature have said so in express terms. The case of the stock in trade is admitted to be rateable. But the cases of the salaries have been long at rest; those are not the subject of a rate. — BULLER J. I concur with my Lord in all the points, except that relative to the 1000*l.*: for which I think the owner is not rateable. The reason for which it was admitted that household furniture is not rateable, namely, because it does not produce any profit, must also govern this: it is stated that the owner has it in hard money, and therefore we must take it, upon this state of the case, that it does not produce profit. In the next place, I am of opinion that money is not rateable within this act of parliament. The legislature could not intend that inquiry should be made as to every guinea which man has in his pocket. If the rate be confined to visible property yielding profit in the parish, there will be no difficulty in adhering

(a) *Ante*, pl. 136.

(b) 26 G. 3. c. 60.

Monies lent on lands lying out of the parish not liable to be rated.

Household furniture not rateable to the poor.

Money, if unproductive, is not rateable. See *vide* Lord Kenyon's observation on this point in *Rex v. Mast*, post. pl. 204.

to that rule; but it will be dangerous in the extreme to extend it further, and to look into every man's bureau to see what money he has there. But at all events I think this person cannot be rated for the reason first given. — GROSE J. I have no difficulty upon the question respecting the ships; they are rateable like stock in trade. But the party cannot be rated for the money at interest. And as to the 1000*l.* not at interest, I have had great doubts in my mind. But, after consideration, I agree with my brother Buller, that the legislature did not intend to rate money. The act of parliament has enumerated all the different species of property which should be the subject of a rate, but has omitted money. Besides which, considering how much this statute has been at different times discussed, and that it has never been held that money is rateable under it, I am satisfied that this is the true construction of the act. For though, generally speaking, usage contrary to an act of parliament cannot bind us in construing it, the not rating money shows what has been the opinion of the profession upon this subject. — LORD KENYON C. J. then said, that he thought there was great weight in the reasons urged by his brethren against rating money; that he had himself expressed great doubts of his own opinion; and that he was therefore glad that that part of the rate would be quashed by the opinion of the Court. And on a subsequent day his lordship mentioned an expression of Yates J., upon the subject of rating personal property, in a case in *Hilary Term* 1769, which was not taken notice of by Sir J. Burrow in his report of it: "If personal property be rateable, it is not to be done at random, and to leave the party rated to get off as he can: but the officer making the rate must be able to support what he has done by evidence. And no personal property can be rated, but the clear liquidated surplus, after paying all his debts." — The rate confirmed as to the ships and stock in trade, and amended as to the other points.

200. *Rex v. Woodward* (a), *M. T.* 33 G. 3. 5 *T. R.* 79. — The case: Part of a certain society of friends, called Quakers, constituting six meetings in London, Westminster, and Southwark, and by subscriptions and donations have raised a fund, which is applicable to the payment of the rent, building, and repairing of meeting-houses belonging to their society. By articles of agreement, dated 1st June 1777, between S. and B., the latter, in consideration of a lease to be granted to them by the former, covenanted to build a Quakers' meeting-house, &c. On the 1st of January 1782, S. accordingly granted a lease of the meeting-house in question, and three adjoining houses, to B. and others, for a hundred and two years, from March 1780. By a deed-poll, dated in May 1784, the lessees declared themselves merely trustees, &c.; and afterwards by indenture of assignment, dated in April 1787, assigned to other trustees in trust, and for the benefit of the society of friends, called Quakers, in London, &c. (comprising Westminster), and to be conveyed, assigned, and disposed of as the society should direct, &c. The basement story of the meeting-house in the rate mentioned is divided into a number of small rooms, one of which is occupied by a person called a door-keeper, whose business it is to attend the door, when necessary, and keep the meeting-house clean; for which service he has a small yearly salary: the remaining apartments

The trustees of a Quakers' meeting-house, of which no profit is made by the pews, &c. are not rateable to the poor.

(a) See *Rex v. Agar*, *post*, pl. 229.

are either not occupied, or appropriated to the use of poor persons maintained by the donations of the people called Quakers. The meeting-house is solely appropriated to religious and charitable purposes. The trustees, who are the persons rated, do not receive any rent for the same; on the contrary they are subscribers to the fund for charitable donations. None of the benches in the meeting-house are let, nor is any pecuniary or other advantage made thereof. The appellants were subscribers to, and frequenters of, the meeting held in the said meeting-house; and warrants of distress issued against them for payment of the above rate. — THE COURT, without hearing any argument, said, that it was impossible to support this rate on the trustees (a), who had no interest in the premises; and that though the meeting-house might hereafter be applied to any other purpose, there was no occupier (b) of it at present, nor any (c) profit made of it. — Rate quashed.

A person employed by the *Philanthropic Society* to superintend the children at annual wages, under an agreement that she should have a dwelling free from taxes, &c. with certain other perquisites, and who may be dismissed at a minute's warning on receiving three months' wages, is not rateable to the poor as occupier of the house provided by the society, she having no distinct apartment therein except a bed-chamber, and her family not being allowed to live there.

201. *Rex v. Field*, E. T. 34 G. 3. 5 T. R. 587. — The case: The appellant is assessed for a messuage, out-house, and premises at a rent of 30*l.* per annum. The messuage and premises were, on the 17th November 1791, demise*d* by B. D. to E. G., on the part and behalf of the *Philanthropic Society*, of which he is the treasurer, for three years at the yearly rent of 30*l.*, being the actual value thereof, and E. G., by a written agreement with B. D., engaged to discharge all taxes. The society is merely a charitable institution, supported by the voluntary contributions of annual and other subscribers; and has for its object the care, instruction, and education of the children of convicts. By articles made on the 22d of September 1792, between E. G., as treasurer, and three vice-presidents of the society of the one part, and the appellant of the other part, the appellant, in consideration of the wages therein agreed to be paid to her, covenanted with them to become the servant of the society in the capacity of matron or mistress, over all such female children as then were or thereafter should be under the care and protection of the society; and to continue as servant of the society until her service should be determined as aftermentioned, and that she, the appellant, would from time to time during such service receive and take under her care, and as her apprentices, if required, such number of female children as the committee of the society shall direct, and would to the best of her skill and ability teach and instruct them in housewifery; and that she would at any time assign over all or any of such children for the remainder of their apprenticeship unto such person or persons as the committee should appoint; and it was by those articles further agreed, that the work, labour, and earnings, as well of the appellant as of all such children as should be put under her care and tuition should belong to, and become the sole property of the society, and be disposed of as the committee or proper officers thereof shall order. In consideration of the good and faithful services of the appellant, as agreed to be done, the treasurer and vice-presidents, on behalf of the society, agreed to employ the appellant as the servant of the society in the above capacity from that day, and also to pro-

(a) *Rex v. Commissioners of Salter's Load Sluice Navigation*, ante, pl. 198.

(b) *Rex v. P. Waldo*, ante, pl. 182.

(c) *Robson v. Hyde*, ante, pl. 181.

vide for the appellant during such service a dwelling free from all rent, taxes, and charges whatsoever, together with good and sufficient provisions, coals, and candles, and to pay and allow her for her service wages after the rate of 20*l.* yearly, by quarterly payments, during such time as she should continue in the service of the society and act therein agreeably to her contract. The articles further contained clauses for determining and putting an end to the agreement therein made on a month's notice being given on either side, or an allowance by the society to the appellant of three months' wages instead of such notice. The messuage and premises rated having been furnished at the expence of the society for the purpose, the appellant with about thirty female children, who were all apprenticed to her in pursuance of the articles, have ever since the execution thereof resided in the said messuage and premises, and have been maintained there at the expence of the society, and under the appellant's superintendence; and they have done no other work than making, mending, and washing their own clothes, and those of a number of boys who were also maintained and educated in other places at the expence of the same charitable institution. The appellant has no distinct apartment for herself, but a bedchamber in the house, and her family is not allowed to reside therein. No profit is derived by any body from the labour of the children; nor is any advantage or emolument derived by the appellant from her situation, other than what is stipulated by the articles, and hereinbefore stated.—**LORD KENYON C. J.** The question is, Whether the appellant be or be not the occupier of this house, so as to be liable to be rated to the relief of the poor? Now, nothing can be clearer than that she is not liable, if the facts stated be attended to. A set of persons, for the most honourable purposes, instituted a society, called the *Philanthropic Society*, in order to rescue from ruin and infamy poor children who are thrown upon the world without any protection. These gentlemen proposed to improve the behaviour and morals of those children, and to render those, who without such assistance would probably prove a nuisance to society, useful and respectable members of it. But to accomplish this, many things were necessary; a house was to be provided for the reception of the children, who were to be fed and instructed in it, and, as the members of this laudable society could not undertake this in person, it was necessary to find some other person who could superintend the whole. Accordingly they engaged the appellant as their servant, and stipulated with her that she should receive and take care of the children, or take them apprentices, if necessary, and she was placed in this house for the express purpose of superintending this charge; and in the terms of the agreement she is to be the servant of this society. It is true, she is to have an apartment in the house; but it is expressly provided that her family is not to reside there. The question arising from these facts is, Whether this person, so acting as a servant, is to be rated to the poor, as the supposed occupier of this house? Questions of this kind have been made before, but they have always met with the fate they deserved. Thus it was in the case of *St. Luke's Hospital* (a), (a) *Ante*, pl. 187. where Lord Mansfield thought it too absurd a proposition to be stated. It said, however, in this case, that the appellant was the

the head of this house : in one sense indeed she was the head of the house, she was the housekeeper appointed to look after the economy of the house ; but every fact in the case negatives the conclusions that it was *her* house : she could neither put in or send out whom she pleased, she acted entirely in a subordinate capacity, subject to the directions and control of the society. It might as well be said, that where a person having a coach-house or a laundry at a small distance from the mansion-house, permits the coachman to live in the one, or a dairy-maid in the other, those servants should be considered as the occupiers of those tenements so as to be rated for them. This case appears so clear to me, that I am surprised that the justices at the Sessions should have entertained any doubt upon it. — BULLER J. One of the arguments is founded on the construction of this act of parliament: the counsel have endeavoured to make a distinction between *inhabitants* and *occupiers* ; and it has been contended, that the word “inhabit” is in legal import more comprehensive than “occupy:” it was used in this statute to signify persons who are not occupiers. But that argument proves too much ; for inhabitants, according to Lord Coke’s reading on the statute of bridges (a), includes persons who have estates, though living elsewhere. But I think that the word “or” in this statute should be read “and;” the four terms “inhabit, hold, occupy, or enjoy,” being used to express the same thing. Then the true question is, Whether or not the appellant be an occupier ? It is said that she is ; for that an occupier is the person in the possession of, and having the control over the house. Then try this case by that definition : If it be sufficient to live in a house, that equally applies to every resident and to every servant : then as to the control, the appellant is a mere servant, she was hired as such, and is liable to be dismissed at an hour’s notice ; for though three months’ notice was to be given by either party, the society might have turned out this servant immediately on giving her three months’ wages in advance. The articles of agreement are merely personal, and give the appellant no interest in the house, which was to be applied to certain specific purposes. The society indeed agreed to provide her with a dwelling, but that dwelling is a mere lodging. The case states that she has no distinct apartments in the house, but a bed-chamber ; and if that were sufficient to constitute her the occupier, every maid-servant would be equally the occupier. A person so situated is only a servant, and not an occupier in the legal or common acceptation of the word. — GROSE J. The question intended to be submitted to us was, Whether or not the appellant be the occupier of the house in question within the meaning of this act of parliament ; and from the different words used in this statute the legislature only meant that *beneficial occupiers* should be rated. This person is rated as having the beneficial occupation of a house of 30*l.* *per annum*. But it appears by the case that she is a mere servant, that she only receives 20*l.* a year for wages, and that she may be turned out of this house at a minute’s warning. — Rate quashed.

The lessee of a
coal-mine is

202. *Rex v. Parrot* (a), *E. T.* 34 *G. 3.* 5 *T. R.* 593. — The case : The appellants are in possession of the colliery, for which they

(a) See *Rex v. Bedworth*, *post*, p. 218.

are rated, under a lease from *A.* and *P.* That lease has been lost, and parol evidence was given of its contents. The lessees were bound by covenant to work the colliery, and they were bound to pay to *A.* and *F.* a sixth part of the money produced by the sale of the coals got from the colliery without any deduction on account of the expence of working. It was proved that upon an average of the last three years the appellants had paid 300*l.* 15*s.* 7½*d.* to *A.* and *F.*, as the sixth part of the money produced by sale of the coals got from the colliery during that time; that upon an average of the expence of working the colliery for the last three years, including the sums paid to *A.* and *F.*, the appellants had lost two farthings and half a farthing on every ton of coals got from the colliery. That the colliery had always been, and still is, a losing adventure from the time of its being first taken by the appellants. That they must have known that it would be a losing adventure at the time when they took it; and their inducement for taking it was, that when they had worked out the coal in this colliery, they would be able to get at coal of their own, which was adjoining to it; and that this was a cheaper way of getting at it than any other which they could have adopted. — LORD KENYON C.J. It is said that this burden is to be laid where the benefit arises; but that rule cannot hold in a variety of instances that might be put. Suppose a landlord makes so hard a bargain with his tenant, that the latter derives no benefit from the farm, must not the tenant be rated to the poor? The landlord certainly is not liable. This case differs from that of *Rowls v. Gell* in this respect; that was the case of *lead-mines*, which are not rateable under the statute of *Elizabeth*; and there the question was, Whether or not the lessee were rateable for certain annual profits which he received without any risk on his part? Of the decision in that case it is not necessary for me to say any thing at present: I will form my opinion upon that question when it arises again. But here the property is rateable under the express words of the stat. 45 *Eliz. c. 2.* It appears in this case that there has been a clear profit of 1000*l.* a year since the lease was granted; and the question is, Whether the appellants, who are the occupiers of these mines, which it is admitted are rateable property, are or are not liable to be rated in respect of this property? Their objection is that they have made an unprofitable bargain with the lessors: but we cannot examine into that; it being sufficient to make them liable, that they are the occupiers of rateable property. — BULLER J. If the property be rateable, and the party rated be in the occupation of it, we cannot examine any farther, and inquire whether or not the tenant has made an unprofitable bargain. — Rate confirmed.

203. *Res v. Dursley (a)*, *M. T.* 35 *G. 3.* 6 *T. R.* 53. — *J. H.* appealed against a poor rate made for the parish of *D.* upon the ground, that *T. T.*, *T. M.*, *J.* and *E. W.*, *W. P.*, *T.* and *N.*, and several others, without naming them, were not rated for their goods, stock in trade, and personal effects; and the Sessions being of opinion that stock in trade and personal property ought to have been rated, quashed the rate, and stated the following case: "The usage has been not to rate personal property in the parish, except that in the parish books, from the year 1566 down to the present time, there were entries from the year 1769 to 1775,

liable to be rated to the poor, though he derive no profit from the mine.

The circumstances under which personal property is rateable to the poor.

(a) See *Rex v. Sherborne*, post, pl. 221.

"intitled, 'Stock charged,' in which several persons were rated for their stock in trade, who paid for the same. Clothiers were not included in this charge, nor have they ever been rated for their stock, nor was any personal property rated before 1768, nor since 1775. *T. T. and Co., J. and E. W., and J. P.* were, at the time when the rate was made, clothiers possessed of visible stock in trade in the parish to the amount of 100*l.* each. *T. M.* is a grocer, and *T. and N. mercers*, possessed of visible stock in trade to the amount of 50*l.* each. Such respective stocks were intended to produce a profit; and from it the parties did or ought to receive a profit. Such trades were sometimes productive, and sometimes not. It was not proved that these parties made any profit of their stock in trade, nor that it was exclusive of their debts, nor that it left a clear residue, nor that it belonged to them, but from its being in their possession." — LORD KENYON C. J. There is no doubt but that personal property is rateable; but the difficulty in this case is to know for what these persons should have been rated. They appeared indeed in the possession of stock in trade, some to the amount of 100*l.*, others to that of 50*l.*; but the justices at the Sessions have not stated whether or not this property belonged to the several persons whom the appellant wished to include in the rate, or if it did, whether or not it produced profit, or whether or not it was liable to incumbrances equal to the value of the property itself. The bare possession of personal property is, to be sure, evidence from which the justices may draw the conclusion that the possessor should be rated; but here the justices, after stating the possession, have raised a doubt respecting other facts which they should have inquired into, and determined upon. They have raised a mist which we cannot dispel. The facts are not sufficiently disclosed to enable us to draw the conclusion that these persons ought to be rated. — The order of Sessions quashed.

Stock in trade, when its value can be ascertained, is rateable to the poor; and every person is to be rated to the poor according to the present value of his estate, whether that value has or has not been increased by his own improvement.

204. *Rex v. Mast*, *H. T. 35 G. 3. 6 T. R. 154.* — *T. M.*, the appellant, was rated for his mill-house, mills, and lands adjoining, at 190*l.* per annum, which is the real annual value thereof. At the time of making the assessment, *W. F.*, as proprietor, occupied within the parish a dwelling-house, counting-house, capital brew-house, store-house, and other appendages, merchant's yard, and about five acres of land adjoining, for which he was charged in the rate at 29*l.* per annum; but the real annual value of the house and premises, in consequence of improvements made by him was 175*l.* *W. F.*, as proprietor, also occupied in the parish certain lands called *Short Lands*, also a homestead belonging thereto, also 24 a. 2 r. of land in *Shelpit-field*, for which he was assessed at 30*l.* per annum: the lands called *Short Lands* were worth 10*l.* per annum; the *Homestead* 5*l.* per annum; and the land in *Shelpit-field* 30*l.* 12s. 6d. per annum. *W. F.*, as lessee for a term of years, occupied a farm called the *Tythe Farm*, with 303 a. 0 r. 33 p. of arable and pasture land, for which he was charged in the assessment at 200*l.* per annum, but the farm and lands are worth 250*l.* *W. F.*, in his trade as a merchant was also possessed of personal property, or stock in trade, visible within the parish, consisting of coals, deals, &c. yielding profit, to the value of 500*l.*; and of a considerable stock in trade in his business of a common brewer, for which stocks in trade or either of them he was not rated. *G. J.*

as proprietor, occupied a capital house and offices, with a merchant's yard, coke oven, lime-kilns, and other convenient out-houses, and granaries, for carrying on the business of a merchant, and for which he was assessed at 25*l. per annum*. The house and offices, independently of the merchant's yard, were worth 30*l. per annum*, and the merchant's yard, &c. 50*l. per annum*. G. J., as proprietor, also occupied two closes, containing about 13 acres with a house, sheds, and other buildings thereon, for the purpose of carrying on the manufactory of tile and brick-making, and for which he was assessed at 13*l. per annum*: the two closes, independently of the house, sheds, &c. are worth 26*l. per annum*; and the house, sheds, &c. 15*l. per annum*. G. J., as a merchant, was also possessed of personal property, or stock in trade, consisting of coals, deals, &c. visible and yielding profit within the parish, of the value of 600*l.*, for which he was not rated in the assessment.

— KENYON C. J. The assessment for the relief of the poor ought to be so contrived, that each inhabitant should contribute in proportion to his ability, which is to be ascertained by his possessions in the parish. Every inhabitant ought to be rated according to the present value of his estate, whether it continue of the same value as when he purchased it, or whether the estate be rendered more valuable by the improvements which he has made upon it. If a person choose to keep his property in money, and the fact of his possessing it be clearly proved, he is rateable for that: but if he prefer using it in the melioration of an estate or other property, he is rateable for the same in another shape. Suppose a person has a small piece of land in the heart of a town, which is only of small value, and he afterwards build on it, he must be rated to the poor according to its improved value with the building upon the land. In short, in whatever way the owner makes his estate more valuable, he is liable to contribute to the relief of the poor in proportion to that improved estate; and whatever be the proportion of rating in a parish, whether to the full value or otherwise, the rate must be equally made on all persons; there cannot be one medium of rating for one class of persons and another for another class. Now here it appears that the appellant was rated at the full annual value of every thing that he possessed, while other inhabitants were not rated at a third of their estates. With regard to the discretion of the justices; if indeed they had confirmed this rate generally, without disclosing to us the grounds on which they proceeded, we could not have quashed the rate, because the inequality does not appear upon the face of it: but they have disclosed those grounds; and on the case, as stated, it is impossible not to say that they have made a mistake. This rate appears so defective throughout that it cannot be amended; it must be quashed. — ASHURST J. The only question in cases of this kind is, respecting the value of the property which the party has in the parish at the time when the rate is made, without considering the manner in which that property became so valuable. — GROSE J. The objection in this case is not confined to the property which Fowler, one of the inhabitants, has improved; it equally applies to other lands in his possession, which he has not improved, and for which he is not rated according to the real value. And I observe that there is no instance in the rate of any person, except the appellant, being rated according to the full value of his posses-

Money rate-
able.

sions. — **PER CURIAM:** Order of Sessions quashed. — It being suggested that, as the Court had not expressed any opinion respecting the stock in trade of some of the inhabitants, the parish officers in making, and the justices at the Sessions in determining upon, another rate would not consider that species of property rateable. — **LORD KENYON** desired that it might not be understood that there was any doubt about that part of the case; for that unquestionably stock in trade, when its value could be ascertained, was rateable to the poor.

The master of a free school appointed by the minister and inhabitants of the parish under a charitable trust, whereby a house, garden, &c. were assigned "for the habitation and use of the master and his family freely, without payment of any rent, income, gift, or sum of money or other allowance whatsoever," for the teaching of ten poor boys of the inhabitants, is rateable to the poor, for his occupation of the same.

(a) *Ante*, pl. 182.

(b) *Ante*, pl. 187.

(c) *Ante*, pl. 176.

(d) *Ante*, pl. 185.

205. *Rex v. Catt*, T. T. 35 G. 3. 6 T. R. 332. — *D.* was occupier of a house and garden of the value of 10*l.* a year and upwards, which he held as master of a free school in the parish of *W.* by appointment of the minister and inhabitants of the parish, under and by virtue of a certain deed of indenture, bearing date the 2d of September 1662, and made between the parties therein named: in which the said message, yards, garden, orchard, and all appurtenances thereunto belonging, situate in the parish, were assigned for the habitation of the master and for the use of him and his family freely, without payment of any rent, income, gift, sum of money, or other allowance whatsoever for or out of the same, together with two acres and a half of pasture land called *Willard's* charity land lying in the said parish; and also the following yearly rent-charges, viz. (three rent-charges on lands in different parishes amounting to 25*l.* a year,) for the teaching of ten boys, sons of the meaner sort of the inhabitants of the parish of *W.* *D.* became master of the school in the year 1774. No rates have been paid for the house and garden, as appears by the poor-rates of the parish of *W.*, which have been examined as far back as the year 1748. *D.* lets the two acres and a half of charity land in the parish of *W.* called *Willard's* charity land, for which the several occupiers are rated in the said rate. — **LORD KENYON** C. J. The cases cited proceeded on the ground that there was no occupier. In *Rex v. Waldo* (a) the rate was held to be bad because there was no occupier; the poor children who were placed there for education could not be considered as occupiers, neither could the woman servant who superintended them. That case could not be distinguished from that of *St. Luke's Hospital* (b), where the rate was also quashed because there was no beneficial occupier. But when a case arises where a person is found to be the beneficial occupier of a house, he must be rated, though the house be appropriated to charitable purposes. (c) As long as *Richmond Park* continued in the hands of the king, it was not rateable: but when the ranger made profits of it and beneficially occupied it, it was held to be rateable in his hands. (d) So if this person had been put in merely to look after the pupils and had not occupied the house, he would not have been rateable; but it appears that he is the beneficial occupier of this house and garden. By the old land-tax act certain property given for charitable purposes is exempted from that tax; but there is no such exemption in the acts respecting the relief of the poor. If the argument against the present rate were to prevail, I do not know how far it might be extended. Those lands that are appropriated for the establishment of the religion of the country are, in one sense of the word, lands given for charitable purposes; but parsonage houses, glebe lands, &c. are rateable in the hands of the occupiers.

It is properly admitted that there cannot be a prescription against the poor rates. If every individual in the parish had agreed not to take advantage of the omission of this person in the rate, perhaps no one could afterwards have objected to it: but that is not the case here. The persons who made this rate seem to have acted honourably as far as respected themselves; but if there be any individual in the parish who objects to the omission of the defendant, the objection must prevail. This is not like the case of *Rex v. Scott* (a), where it was held that the master of the school was exempted under an act of parliament, by which the legislature had a right to bind every person; for this defendant was appointed by deed, and only those who are parties to a deed are bound by it. — GROSE J. In *Rex v. St. Luke's Hospital*, which was one of the first cases on this subject, the ground on which the Court proceeded was, not that the house was given to charitable uses, but that there was no person who could be said to be the occupier of it. The rate there was not considered as improper because the property was not in itself rateable, but because no occupier could be found. But in this case there is an occupier. That part of the land, given for the same purposes in this case, which is let out is rated in the hands of the several occupiers; no objection is made to that part of the rate; and I cannot distinguish between the house and garden occupied by this defendant and the land so let to those occupiers. The defendant is a beneficial occupier of the property for which he is rated; then here is that person an occupier, who could not be found in the case of *St. Luke's Hospital*. — LAWRENCE J. In order to make this like the case of *Rex v. Waldo*, the rate should have been on the founder of the school. — The rate confirmed.

(a) *Ante*, pl. 193.

206. *Rex v. Darlington* (b), *M. T.* 36 G. 3. 6 *T. R.* 468. — G. A. and J. W. appealed against a poor rate, because seven persons, particularly T. P. and S. B. were not rated for their stock in trade; the Sessions quashed the rate, and stated a case for the opinion of this Court. The facts of the case, as far at least as it is necessary to state, were as follow; it did not appear whether stock in trade had or had not been rated in *D.* prior to 1745: from 1746 to 1782 it had, and again from 1788 to 1794 it had been rated. At a parish meeting in 1794, at which most of the inhabitants and some of these parties attended, the parish-officers were requested not to rate stock in trade. The appellants then proved the rate made in August 1794, which continued in force for the remainder of that year, against which neither of the seven persons in question appealed, though it appeared that they were thereby rated for their stock in trade, as yielding certain profits (stating them); and which the appellants contended was an admission that to that time those seven persons possessed stock in trade producing the profits there stated. This rate was paid by some of the traders, but not by others, to enforce payment from whom no steps had been taken. The appellants then proved that T. P. in January 1795, when the rate was made, kept a grocer's shop, and S. B. an hardware shop in *D.*, that each possessed a visible stock in trade there, and that they appeared to carry on business there to the same extent as in 1794. "The circumstances of the ability of P. and B. and the other five persons, or that they respectively made profit of their stock in trade, or

Stock in trade, if it be the property of the person in possession and productive, is rateable to the poor; and its having been rated one year, is *prima facie* evidence of its having been productive the next.

(b) See *Rex v. Ambleside*, *post*, pl. 230.

(a) *Ante*, pl. 208.

"that it was exclusive of their debts, or that it was a clear residue due after debts paid, did not appear *otherwise than as hereinbefore is stated*." — LORD KENYON C. J. The case of *Rex v. Dursley* (a) has been particularly pressed upon us, as a decision of our own; but the present case is clearly distinguishable from that. There the Court of Quarter Sessions had forborne to draw any conclusion from the facts proved before them, and left a mass of evidence for our consideration, but so incomplete that we could not say upon the facts stated whether the parties ought or ought not to have been rated; whereas here the justices have drawn the conclusion. They have indeed added to the case, that it did not appear to them that the stock was productive, &c. "*otherwise than as thereinbefore is stated*;" but then it becomes material to see what is before stated; it is stated that these persons had large visible stock in trade, that in the preceding year they were rated for that stock, and that they submitted to the rate, for whether paid or not at the time is immaterial, no appeal having been made against the rate. Then, their circumstances not being altered, the question is, whether all this was not *prima facie* evidence for the justices to proceed upon, and whether, as this evidence was not opposed by evidence on the other side, it was not sufficient to enable them to draw the conclusion which they have drawn. Undoubtedly it was strong *prima facie* evidence against the persons rated; and they should have discharged themselves in such a case by evidence, showing that they ought not to have been rated. I feel indeed the severity of compelling persons in trade to make a disclosure of their circumstances; but this is not a singular case; persons appointed sheriffs in some corporations being sometimes obliged to disclose their situation in order to excuse themselves serving the office. In this case some evidence was before the justices in support of the rate; it was competent to them to decide on the weight of it; they have decided; and we cannot now say that the conclusion they drew was certainly wrong. — GROSZ J. There is no doubt but that generally speaking stock in trade is rateable: under what circumstances indeed it is rateable is another question, and in some cases it is a question of considerable difficulty. Here there was evidence to a certain degree that the stock in question was productive; the owners were rated for it the preceding year, that rate was not appealed against, and their situation does not appear to be altered. And as this evidence was not contradicted by other evidence, we cannot say that the justices did wrong in thinking it to be sufficient evidence for the purpose for which it was adduced. — LAWRENCE J. declared himself to be of the same opinion. — Order of Sessions confirmed.

An attorney is not rateable to the relief of the poor for the profits of his profession.

207. *Rex v. Startifant, M. T.* 37 G. 3. 7 T. R. 60. — The defendant appealed against a poor rate, in which he was assessed 2s. 3d. in respect of his profits and fees of his profession as an attorney: the Sessions confirmed the rate, and stated the following case for the opinion of this Court: The appellant is an attorney at law, and an inhabitant practising within the borough of P. There are many other attorneys also inhabiting and practising in the borough. The usage of rating attorneys for the profits and fees of their profession first commenced by an assessment made for the relief of the poor in the year 1732, and has ever since

prevailed, such attornies being rated according to the supposed profits and fees of their profession or business; some at 12*s.* others at 9*s.* and others at less sums in each rate or assessment. Objections have frequently been made by the attornies so rated to the legality thereof, and in some few instances payment has from time to time been resisted; but no appeal to such rates or assessments has before been brought to trial. The sum of 2*s.* 3*d.* is no more than the appellant's just proportion or share towards the rate, if in respect of such his profits and fees of his profession he is legally bound to contribute any thing towards the relief of the poor of the borough.—THE COURT said that there was no doubt in the case; and they quashed the order of Sessions.

208. *Rex v. Skingle, E. T.* 38 G. 3. 7 T. R. 549.—T. appealed against a rate made for the relief of the poor of the parish of S., in which W. H. was rated at 180*l.* for a messuage, farm, and lands, containing 386 acres, held by lease, commencing at Michaelmas 1779, and expiring at Michaelmas 1800, at the rate of 180*l.* under the usual covenants; and which rent was the annual value of the farm at the commencement of the said lease; W. H. was also therein rated at 7*l.* per annum for certain lands held under the same lease at a separate rent of 7*l.* In the rate J. B. was rated at 110*l.* for a messuage and lands containing 300 acres, held under a like lease, commencing at Michaelmas 1780, and which will expire at Michaelmas 1801, at the rent of 110*l.* The ground of the appeal was, that W. H. and J. B. were under-rated for the farm and lands in their occupations; and the appellant offered evidence to the Court to prove that the said farms and lands are now of greater annual value than the rents reserved by the said leases; but as the farms were of no greater annual value at the commencement of the lease than the reserved rents, and no fine or premium having been paid, nor any other rent or consideration paid than the rents reserved by the leases aforesaid respectively, the Court of Quarter Sessions were of opinion, that the rents reserved by the leases were conclusive evidence of the value of the said farms and lands, and rejected the evidence tendered by the appellant: and they confirmed the rate, subject to the opinion of the Court.—THE COURT said that the case was too clear for argument, and directed that the rule for quashing the order of Sessions be made absolute.

A lessee of land should be rated to the poor according to the present value of the land, and not merely on the rent reserved by the lease.

Rent reserved not conclusive evidence of the value of the land.

209. *Rex v. Bell, E. T.* 38 G. 3. 7 T. R. 508.—The case: The appellants are the lessees and workers of certain coal-mines situate at Long Benton, &c. in N. For the purpose of rendering the collieries a beneficial concern, a communication with the navigable river T. by a passage over the lands which lie between the parish of Long Benton and the said river T. is absolutely necessary. The lands which belong to and are situate in W. lie immediately between the said collieries and the river T., and are contiguous thereto, and are all held of the dean and chapter of D., by leases granted by them to their respective lessees for terms of twenty-one years; and in all the leases which have been granted by the dean and chapter of lands in W. a clause to the following effect is inserted, "That the dean and chapter and their successors should have full and free authority and power of laying, making, and of granting waggon-ways, in and over the premises by them so demised in the different leases, paying reasonable damages

The occupier of lands on which a way-lease is erected for the purpose of carrying coals is rateable for the same to the poor, whether his title to it be good or bad. See *Rex v. Jolliffe, ante*, pl. 187.

“ for the spoil of ground ; the said damages to be settled by two “ indifferent persons to be chosen by the parties.” The appellants for the purpose of exporting the coals won by them in *Long Benton*, and vending the same by sea-sale, contracted with the dean and chapter for certain way-leaves or liberties of passage for leading and carrying coals in waggons or otherwise, and for making, laying, and placing waggon-ways, erecting bridges, and levelling hills and rising grounds, in, through, and over the lands and grounds situate in *W.* which lay between the said collieries of the appellants and the river *T.*, and in the most convenient direction towards the river, for a term of years, and under a yearly rent. In pursuance of this contract, the appellants on the 20th of *November* 1791, obtained from the dean and chapter a lease for twenty-one years, at the yearly rent of 200*l.*, of way-leaves and liberties of passage in, through, and over the lands and grounds of *M. W. &c. &c.* (those lands being situate in *W.*, and being all held by leases heretofore granted by the dean and chapter,) in such direction towards the navigable river *T.* as the same was marked out in a certain plan or sketch annexed to the same lease ; and in the said lease the appellants covenanted and agreed with the dean and chapter that they would make such reasonable satisfaction to *M. W. &c.* for spoil of the soil by using the said liberties and privileges to them granted by the said lease as should be settled by two indifferent persons, &c. The appellants in pursuance of the powers contained in the said lease, have accordingly made and laid a waggon-way in, through, and over the grounds of *M. W. &c.* in *W.*, and to complete it they erected a bridge, and also in many places removed the soil and levelled the rising ground, and for the whole length of the way in the line, as the same was staked out to them, they put and placed sleepers or dormant timbers below the surface of the soil, and to sleepers or dormant timbers they affixed rail-ways or waggon-ways ; they also built two houses on parts of the said way, which are occupied by the gate-keepers or other servants of the appellants ; and when the waggon-way was finished the appellants put and placed rails on both sides of the way for the whole length of it, except where it was otherwise fenced by old hedges. They also placed four gates at different places across it, which are always kept close and locked by them, except at the times when their coal-waggons are travelling upon the waggon-way, by means of which four gates and railing all persons, as well the lessees of the dean and chapter and their under-tenants as all other persons, are kept off the waggon-way. The whole of the ground which is taken up by the waggon-way is between five and six acres ; and all the way lies in *W.*, which maintains its own poor separately. The appellants are rated to the poor in *Long Benton* at the rate of 1200*l. per annum* ; being the annual rent which they pay for the liberty of working coals, breaking the soil, and the other privileges which they have by their leases in the parish of *Long Benton* only. And the 200*l. per annum* which they pay to the dean and chapter for the waggon-way in *W.* is not part of the 1200*l.* The grounds of the above mentioned lessees of the dean and chapter through which this waggon-way passes are let to under-tenants, to whom no abatement out of their rents is made by their landlords for this way, but they (the under-tenants) receive annually from the appellants a

compensation for the spoil of ground occasioned thereby in proportion to the damage they respectively sustain by the way, amounting to 17*l*. The under-tenants have been and continue to be rated to the poor in *W*. according to the rents they pay to their landlords: no diminution of the sums at which they were rated has taken place since the waggon-way has been rated to the poor, and the waggon-way was not rated to the poor before. — LORD KENYON C. J. I entirely agree with the opinion given in the case of *Rex v. Jolliffe*; but this case is very distinguishable from that. The question here is not respecting the quantum of the rate, but merely whether the defendants are or are not possessed of property that is rateable to the poor; and on that point there can be no doubt. One ground of argument is that, because the dean and chapter could only grant a way-leave, therefore nothing more than a way-leave passed to the defendant; but we are not to inquire into the titles of the occupiers. If a disseisor obtain possession of land, he is rateable as the occupier of it. Without going through the different parts of the case which show an occupation of the ground by the defendants, it is sufficient to say generally that they clearly appear to be the occupiers. Therefore I am of opinion that the rate must be confirmed. — GROSE J. It is impossible to read this case without seeing that the defendants have the exclusive occupation of this ground. It is stated in the case that the defendants have enclosed the ground, of the extent of five or six acres, thereby excluding "the leasees of the dean and chapter and their under-tenants as well as all other persons;" that they have placed gates across the way, erected a bridge, and built two houses on it which are occupied by the servants of the defendants. They were therefore properly rated as the occupiers of this ground. — LAWRENCE J. of the same opinion. — The rate confirmed.

210. *Rex v. Alberbury, T. T.* 41 G. 3. 1 East, 535. — *J. M.* and *T. B.* were joint occupiers of certain lime works in the quarter under *R.* and *L.*, to each of whom they pay a royalty. The limestone when got is burned in kilns on the premises. Owing to the risk and expence of working, the profits of the occupiers are very uncertain. — LORD KENYON C. J. The only question is, Whether the persons named in the rate as the occupiers of the lime works are rateable in respect of that species of property? The landlords, who derive a certain profit upon it in the nature of rent, could not have been rated, because that would be to rate the subject matter twice. But what possible objection can there be to the rate upon the occupiers. There is no pretence to call this a mine. But the land itself is convertible into a source of profit, said indeed to be uncertain; but it is well known to be productive, and the very statement of this case shows it to be so. (a) And as to the quantum, that must be settled by the Sessions.

Lime works are rateable in the hands of the occupier, though there be risk and expence in the working, and the profits are uncertain.

211. *Rex v. Munday, T. T.* 41 G. 3. 1 East, 584. — *J. M.* appealed against a rate. The Sessions confirmed the rate, subject to the opinion of this Court on the following case: *R.* having

The objects of a charitable foundation in the actual occupa-

(a) The profits paid to the land owner were considerable; and in *Rex v. Parrott*, 5 T. R. 593. the lessee of a coal mine was holden liable to be rated, though he derived no profit from the mine after paying the rent to his landlord. Vide *ante*, pl. 202.

tion of the alms-house and lands for their own benefit in the manner prescribed by the rules of the institution, and liable to be dismissed for any breach of such rules, are rateable in respect of such occupation.

founded a corporation in the parish of *F.*, in the county of *E.*, for the relief of the poor there, called *chaplains, parochians, and wardens of F.*, and having endowed them with certain lands for that purpose, and for the support of a school therein, by indenture, dated the 27th of *September*, 7th of *Eliz.*, granted to the corporation and their successors a messuage called *Colliers*, situate in *F.*, and twenty acres of land, with a wood of four acres in the said parish; and likewise the rectory of *Braintree*, in the said county; for certain uses to be declared by the said *R.* in a certain indenture. *R.* accordingly by indenture dated the 28th of *December* in the same year, reciting the former deed, and that he had appointed for ever the said messuage for an alms-house, for the only relief, dwelling, habitation, and lodging of five poor, old, weak, impotent, or lamie persons, as well men as women, and also for one grave woman to attend them, each to be nominated and placed from time to time by him and his heirs, and there to remain during their natural lives, to the intent that they the said five poor alms-folks for the time being should daily come to church, &c.; ordained and declared, that there should be and continue from time to time in the said messuage five such poor men and women, &c. and one grave woman to attend them, and to prepare their meat and drink, &c.; which said six persons should have freely during their lives their dwelling-chambers and lodging in the said alms-house, with such relief, profit, and necessities, and in manner and form as should be therein declared. It was further declared, that *R.* and his heirs should be perpetual patrons of the foundation. And that if any of the six persons should die or be justly removed, then *R.* and his heirs should appoint and place one other man or woman of the sort aforesaid in their place, in manner and form as the persons so dead or removed had possessed or enjoyed: and in default of such appointment by *R.* or his heirs, the chaplain and churchwardens of *F.* for the time being should appoint for that turn only. It then gave the patron, upon report of the chaplain or churchwardens, a power of removal in certain cases of misbehaviour, or in case of wilful wasting of the property, or conveying it away, or upon marriage, or keeping any children in the said house. And further it was declared, that the said five poor alms-folk and woman-attendant should possess, enjoy, and use from time to time for ever, by the sufferance and permission of the said chaplain, parochians, &c. such several lodgings in the said alms-house freely and quietly as to every of them from time to time were appointed by the patron, &c.; and also should possess, use, and enjoy all together, by the said permission, the hall, kitchen, buttery, cellars, barns, &c. and all profits and commodities to the said alms-house belonging. And that the said chaplain, parochians, &c. should from time to time permit the said five poor folk, &c. to have, hold, use, possess, and enjoy their several dwellings, and the said hall, kitchen, and all other the said profits, and also further to have, occupy, and use the said two crofts, pastures, tithe-hay, and the said wood specified in the said deed of the said 27th *September*, 7th of *Eliz.*, with such kine and cattle, with the increase of the same, as the said five poor alms-folk, &c. for the time being should bring up upon the same, in manner and form as *R.* should order: and also should permit the said five, &c. for their fuel, to be spent in the said alms-house for their relief, as

well to bake, &c. and to prepare meat, &c. and other necessities convenient for their relief, to take, cut down, and carry away to the said alms-house for the causes aforesaid, to their use and profit yearly, one rood of the said wood, called *Ensfeld's Wood*, to be spent only on the said alms-house; and also to lop, crop, and shed the trees growing in or upon the premises, without felling any oaks, ashes, &c. or other trees above the growth of 25 years, except they be rotten, without hindrance, let, or interruption of the said chaplain, parochians, &c. *R.* also ordained, that the said five poor folk for the time being (or in their default the said chaplain, parochians, &c. out of their wood) should yearly fence and preserve the said rood of wood, to be so felled and carried away, at their own proper costs and charges. *R.* also gave to the said five poor folks and woman six good kine, to be used and employed to and for their relief (out of which the stock was to be kept up for ever), by the advice of the chaplain and wardens, and of the farmer of the manor of *F.*, for the time being. And he directed that the said poor folk should yearly sell one cow of the said kine to their only use, profit, and commodity, to be employed to their better and further relief; and also yearly bring up one cow-calf for the increase of their said stock: and further, that the said poor alms-house folks, &c. should be ordered and governed in all things by the advice and consent of *R.* and his heirs (or in their default by the chaplain and wardens, &c.) not repugnant to any article, &c. in these presents. And if any of the said folks or woman would not be ordered and governed in form aforesaid, they should be removed and put out from his or her room and place, lodging and living, &c. as if the party so refusing were dead. But their several payments of money to them they were to use and dispose of at their own pleasure without control. The appellants, being such poor, old, weak, impotent, and lame persons, were regularly appointed to the said charity, pursuant to the said deed of the 28th of December 1565. The rate in question, dated 16th December 1800, was as follows:—

Messrs. *Munday, Low, Drakewood, Hicks, Beexe, and Thorp.*

The Alms-house	} Total Rental	} £ s. d.		
and				
Lands.				
	} £15	0	0	} 2 0 0

At the time of the rate being made they were in the occupation of the said messuage called *Colliers*, and the said twenty acres of land and four acres of wood-ground in *F.*, conveyed by the deed of the 27th of September, 7th of *Eliz.*, and paid a labourer for making hay and cutting their wood, and disposed of both to their own use. They also kept six cows upon the same lands, weaned a calf, and sold a cow every year, according to the directions in the said deed of the 28th of December; and of the other calves and of the milk they disposed at their own pleasure. At the time at which the appellants were appointed they were not parishioners of *F.* The premises are of the annual value at which they are rated, and were never rated before. The visitor of the said alms-house has frequently granted additional relief to the said appellants. — LORD KENTON C. J. The Sessions have told us what the custom has been with respect to rating these persons for the property in question, an inquiry which I should not have thought it material to make: for the only matter we are called upon to de-

cide is, as to the meaning of the statute of *Eliz.* Neither is the wisdom or propriety of rating these persons to be considered: nor should I have advised the parish officers to do so; because it is probable that what they take from them in one shape must be returned in another. But the case being here, we can only deal with it as the law has pointed out to us. The words of the statute 43 *Eliz. c. 2.* are general; the rate for the relief of the poor is to be levied upon *every occupier of lands, houses, &c.* There is no exception made of hospital or other lands devoted to charitable purposes: and I was anticipated from the bar in an observation which occurred to me to arise from comparing that statute with the land-tax acts, that where the legislature intended to exempt property of this description, they have done so in the latter in express words. When the statute of *Eliz.* was passed, poor-rates had not grown to that calamitous size which we have seen them reach in our time; and parishes have not been accustomed to draw any aid from small properties: but now contribution is looked for from every species of property liable to be rated, without regard to what has been done before. It is admitted here, that the property itself comes within the general description of rateable property in the statute; and the only question is, Whether these persons can be said to be occupiers of it for their own benefit? Now what does the case state? These persons plough, and sow, and reap, and have every sort of occupation, in fact, which any other person can have: and all this for their own benefit. If this be not an occupation within the statute, I know not how far the exemption claimed may extend. Surely the smallness of the benefit cannot constitute an exemption. Suppose an hospital endowed with lands for a certain number of persons who have a provision there. At first perhaps it might only have afforded a small pittance to each of the members. Shall it be said that they were not rateable then, and would only become so when the revenues were increased? Where is the line to be drawn? But supposing that in time it afforded an income of 70*l.* or 80*l.* a year to each individual: shall it be said that they are not bound to contribute any thing, because they derive that benefit from a charitable institution? Then it is said, that cases have decided that property of this kind is not rateable, because no occupier could be found: but no case has decided, that were persons are found in the actual occupation and having a beneficial enjoyment of it, they are not within the statute. — *GROSE J.* It is not the question whether it were wise or meritorious to rate these poor objects; but the overseers have a right to insist that they come within the description of persons liable to be rated by the statute 43 *Eliz.*; that is, that they are beneficial occupiers of lands and houses; and if they do so, we cannot say that they are not rateable. But it is asked, Where is the case which says that persons who are the objects of a charity are rateable? I could put many cases where they ought to be rated. For instance; suppose a person gave 1000*l.* a year amongst five persons, who were to be selected as being objects of charity: should they not be rated on that account? I remember when the case of the Bursar of *Catherine Hall* (a) was decided. He was contended not to be rateable; but it was determined otherwise. Yet he was an object of charity in one sense, being appointed to

(a) *Rex v. Gardner, ante*, pl. 167.

a situation in a charitable foundation; and I cannot distinguish upon a question of law between one sort of charitable foundation and another. As to the quantum of the rate, it is a matter for the Sessions to determine. — LAWRENCE J. I am of opinion, that under the circumstances of this case it is a good rate. The distinction has been truly taken upon the cases, that wherever persons have been found in possession of property from whence they derived a benefit to themselves, they have been holden rateable as occupiers. And all the cases which have been decided against the liability to be rated have either been upon the ground that the party rated was not the occupier, or if he were, that he derived no benefit to himself. But it is said, that the objects themselves of a charity, though beneficial occupiers, do not come within the meaning of the stat. 43 *Eliz.*, for that the object of the rate directed to be levied by that statute is for the relief of poor and impotent persons, and consequently it could not be intended to levy the rate upon such. But however the persons rated might have been poor and impotent at the time when they were selected as objects of the charity, yet after their appointment to be members of the foundation they ceased to be of that description of persons, and therefore became rateable in proportion to the property so acquired. — LE BLANC J. The only question here is, Whether the Sessions have rated persons in possession of rateable property? There is no doubt but that the property is rateable within the stat. 43 *Eliz.*, &c.; and without relying on the fact found of these persons being the actual occupiers, I think sufficient appears from the other facts of the case for the Court to say that they are properly to be considered as occupiers. They occupy the property for their own benefit; and whether it be more or less beneficial is not an object for our inquiry. In other cases of this sort the endeavour has been to find out whether the persons rated were in the occupation of the property; or if so, whether they occupied it for themselves or merely as agents or servants for others, deriving no benefit from it themselves. Such were the cases of the hospitals, and such was the case of Mr. *Waldo's* charity; and in the last mentioned case the Court considered that he was not the occupier. But these persons are in the actual occupation of rateable property; and there is no exemption in their favour in the stat. 43 *Eliz.*: nor is there any case which has decided that persons of this description occupying such property for their own benefit shall not be rated. Therefore, whether the benefit be more or less, we must say that they are liable to be rated in respect of the occupation of such property. — Order of Sessions confirmed.

212. *Rex v. Woodland*, H. T. 42 G.3. 2 East, 164. — The case: The appellant is the occupier of certain slate quarries in the said township. The working of such quarries is attended with great expence and risk, and is considered always as a matter of uncertainty and speculation. The outward surface of the country when the soil is taken off is generally a sort of rock composed of slate mixed with coarse stone, which is very hard, and not at all proper for splitting into slates. Some idea may be formed by skillful persons whether the proper kind of slate may be found below. The process adopted for procuring slates is first to remove the soil, and then to blast the coarse outward rock by means of

Rex v. Waldo,
ante, pl. 182.

A slate-work,
(or as improperly
called a slate-
mine) is rateable
to the poor.

gunpowder. Sometimes a good vein of pure slate is discovered. But it has often happened that works have been carried to the depth of thirty yards at the expence of some hundred pounds without meeting with any. The best slate is at the bottom of the quarries, many of which are upwards of fifty yards deep. A good vein when found may last for some years: at other times the veins are soon worked out. A shaft is never sunk, as in coal-pits, the quarries being commonly worked by day-light; though a level has been known to be driven one hundred yards under ground. When the pure slate is found, large blocks are detached by means of gunpowder, which are afterwards split by iron tools or gunpowder into thin pieces of merchantable slate. These ought not to be thicker than half an inch, and are more valuable according to their lightness. It is so difficult to procure pieces of sufficient size and of the proper thinness, that for one cart load of merchantable slates it is usual to be encumbered with forty cart loads of refuse slate of no value, though of the pure sort of slate, being too small for use. When quarries are opened in the waste, a rent is sometimes paid to the lord for a certain district: sometimes he receives a sum of money for every ton of slate procured. In the inclosures a rent is generally paid for the land. The slate mines have never before been rated. — GROSE J. The only ground on which it is contended that the subject matter is not rateable is, because it is denominated a *mine*: but though that word has slipped in at the end of the case, yet it cannot alter the nature of the thing, which is nothing more than a slate-work, and no mine in the proper sense of the word. Then how is it possible to distinguish a slate-work in this respect from a lime-work, which has been determined to be rateable? The express mention of coal-mines in the statute has been holden to be an exception of other mines; but there cannot be a doubt but that a slate-work, not being a mine, and producing profit, ought to be rated. And the case expressly distinguishes between the annual value of the slate-works, and of the lands which were separately assessed for their respective values. — LAWRENCE J. I consider the case of *Rex v. Alberbury* has having decided this point: but if this be a mine, the subject matter in that case was improperly described. In truth however neither lime nor slate-works can be deemed to be mines, in the sense in which they were construed in the case of *Rex v. Richardson* to be virtually excepted out of the stat. 43 *Eliz.* For Lord Mansfield, speaking of such mines, confines the exception to such as are governed by particular laws of their own; like those in *Devonshire, Cornwall*, and other counties, the ownership whereof is exercised in a different manner from that of the soil. And this he considers might be a reason why they were not named in the statute. Now that part of his argument is totally inapplicable to the present case. But if every substance which is raised from under the surface of the soil is to be considered as the produce of a mine, and therefore that the profits of it are not rateable, the exception will equally extend to gravel, sand, marble stone, and the like; none of which were ever considered as the produce of mines. — LE BLANC J. This case is within the principle of the decision in *Rex v. Alberbury*, and is not within the virtual exception of the stat. 43 *Eliz.* — The rate was confirmed.

218. *Ras v. Terrott, E. T. 43 G. 3. 3 East, 506.* — The defendant appealed against a rate made for the relief of the poor of the parish of *P.* The Sessions confirmed the rate, subject to the opinion of this Court on the following case: The appellant is a lieutenant-colonel in His Majesty's royal regiment of artillery, and is, and, during the following periods, was commanding officer of the royal artillery at *P.*, viz. from the year 1795 to August 1799, and from October 1800 to the present time. The premises in respect of which the appellant is rated are the property of the Crown, and part of a barrack called the *Colewort Garden Barrack*, and until 1801 it was appropriated to the use of the privates of the regiment; the officers, and amongst others the appellant, having quarters in an adjoining building under the same roof. In 1801 the board of ordnance directed a quarter with offices to be fitted up for a field officer; in consequence of which the privates were removed to another building in the same barrack yard, and the building, at a considerable expence to the Crown, was altered to its present form. The building in which the appellant resides consists of two stories with four rooms on each floor, besides attics. The rooms on the ground floor are thus appropriated; one room as a store-room, another as a quarter for the adjutant, a third as an office for a commanding officer to transact the business of the regiment, and the fourth as the appellant's kitchen. The whole of the first floor and the attics are the residence of the commanding officer of the artillery for the time being, together with a kitchen, wash-house, and other offices, coach-house, stable-yard, and small garden or drying-ground. The appellant resides there with his wife, family, and servants; two of the latter, a man-servant who is one of the private soldiers of the artillery and his wife, who is cook to the colonel, sleep in the attic, and the other female servant sleeps in one of the rooms on the first floor. The rate is made for the whole of the premises used by the appellant. The outer door of the building opens into a passage between the office and the room used as a store-room. There is, however, no communication with that room or the adjutant's quarter by means of the door or passage, nor are they otherwise connected with the apartments of the appellant than being under some of the rooms; the entrance into them being through the door of the adjoining building, in which the other officers have apartments. The part used by the appellant is in every respect separate and distinct from the rest, there being no communication between it and any other apartments, and the outer door above-mentioned leading only to the appellant's apartments, and being subject to his control; except that the store-house and adjutant's quarter are under two of the rooms of the colonel's quarter; and except the office being public for the duties of the service at such hours as the commanding officer pleases. At the time of fitting up the building, chairs, tables, the grates, and the usual barrack furniture were supplied by the Crown; beds, and the residue by the appellant. The appellant is liable to be ordered elsewhere upon service at any moment at pleasure of the Crown. In 1799 he was ordered and went to the *Y.* On that occasion the command devolved to Lieutenant-Colonel *Seward*, who during his absence resided in the apartment in which the appellant resided before his departure, and which he

Where the commanding officer in barracks had distinct apartments allotted to him, one in particular for transacting the business of the regiment, and the others fitted up for the accommodation of himself and his family, who resided there with him, containing amongst others a kitchen, wash-house, and coach-house, together with a stable, yard, and garden: Held that he was rateable to the relief of the poor for the same, having a beneficial enjoyment of them beyond his necessary accommodation as an officer for the purpose of public service.

returned to on being again ordered to *P.* to take the command. The question for the Court was, Whether the appellant were liable to be rated in respect of any part of the premises? If he were, the rates to stand: if not, the rates to be amended by striking out his assessment.—LORD ELLENBOROUGH C. J. now delivered the judgment of the Court. The question in this case is, Whether the appellant is to be considered as an occupier of the premises for which he has been rated? [Here his Lordship stated from the case the situation of the premises, and the manner in which they were occupied by the appellant and his family.] These apartments and premises appear to have been put into their present form at a considerable expence by Government, in the year 1801, for the accommodation of the commanding officer of artillery at *P.* barracks, and the appellant has ever since resided therein. Of the eight rooms, besides attics, one room is a store room, another a *quarter for the adjutant*, and a third an office for the commanding officer to transact the business of the regiment: the rest of the rooms and offices are all devoted to the personal use and accommodation of the commanding officer. If the permanency and duration of the occupation and the quantity of interest which the occupier has in the subject of such occupation were not, as laid down by Buller J. in *Lord Bute v. Grindall*, 1 Term Rep. 343., generally immaterial, it would still form no question in the present instance, as the appellant has had a long, and has a still continuing occupation (supposing him to be in law an occupier at all) of the subject for which he is now rated, that is, from 1801 to the present time. And the legislature contemplated the situation and ability, at the time, of the party subjected to this rate, which was by the 12th section of the stat. 43 Eliz. directed to be a weekly sum; such sum imposed therefore of course with a reference to actual ability at the weekly or other short periods at which the rate is made, and not as to what it might be at any subsequent period. The principle to be collected from all the cases on the subject is, that if the party rated have the use of the building or other subject of the rate as a mere servant of the Crown, or of any public body, or in any other respect for the mere exercise of public duty therein, and have no beneficial occupation of or emolument resulting from it in any personal and private respect, then he is not rateable. The property of the Crown in the beneficial occupation of a subject, whether he be a civil officer of the Crown, as in *Lord Bute's case* (who was ranger of the *New Park* near *Richmond*,) and in the case of the comptroller of *Chelsea Hospital*, *Eyre v. Smallpage*, 2 Burr. 1059, or as a military officer, as in *Hurd's case*, he is in each case equally rateable. For in these cases each of the persons rated had a degree of personal benefit and accommodation from the property enjoyed by him *ultra* the mere public use of the thing; and which excess of personal benefit and accommodation *ultra* the public use may be considered as so much of salary and emolument annexed to the office, and enjoyed in respect of it by the officer for the time being. But if the use or residence upon the property be either as the servant of the Crown and for public purposes only, as in *Lord Somers's case*, or as a mere public officer or servant, or of any other description such as the superintendant of the *Philanthropic Society*, *Rex v.*

Ante, pl. 185.

*Ayr v. Small-
peace, ante*, pl.
154.

Ante, pl. 210.

Field, 5 T. R. 587., the trustees of a meeting-house the servant at *St. Luke's*, the Masters in Chancery in respect of their public offices; in all such cases, the parties having the immediate use of the property merely for such purposes, are not rateable; because the occupation is throughout that of the public, and of which public occupation the individuals are only the means and instruments. It is said that if the commanding officer be rated for the degree of private accommodation he enjoys in a building of this description, why not the soldiers in their barracks for the accommodation they enjoy there? I am not aware that private soldiers have any accommodations in barracks beyond what are required for the mere ordinary uses and purposes of animal nature, I mean for sleeping, and eating, and the like: but if their barracks should supply even them with any accommodation of a beneficial and valuable and not strictly of a necessary nature, the analogy between the two cases would rather afford perhaps a ground for including them, under such circumstances, in the rate, than for excluding an occupier of the present description from it. The reason of the thing, and the sound and established construction of the statute, subjects every person who has the beneficial use of any local viable property in a parish to this species of public contribution. The parish is liable to be burthened with settlements of them and of their children: a part of the property antecedently contributing to the poor-rate is by being thus built upon and appropriated to such public purposes effectually withdrawn from its liability to contribute, unless the nature and quality of the occupation thereof restores and throws it back again either in the whole or in part within the scope and reach of this species of parochial contribution. And the immediate occupant has, in fact, nothing to complain of; for I believe it never has occurred in experience that the quantum of the mere rate upon an occupier of this kind has exceeded in amount the benefit and advantage derived to him from his occupation. Whether the commanding officer could withdraw himself from the rate, by contracting his occupation in some proportionable degree within the same narrow limits of merely necessary enjoyment with the soldier in his barracks, will be a question to be decided when it shall occur. It is enough for us to say at present, that upon the principles laid down and acted upon in the cases already referred to, the commanding officer in question has such a beneficial occupation of these apartments and other conveniences as to render him rateable for the same, and that this rate of course should stand, and the rule for amending the same be discharged.

214. *Rex v. Aberavon (a)*, *M. T. 45 G. 3. 5 East, 453.* — *D. J.* appealed against a poor-rate, and the Sessions quashed the rate, subject to the opinion of this Court on the following case: The parish, town, and borough of *A.* in the county of *G.* are co-extensive, and have churchwardens and overseers appointed in the common way. The portreeve, aldermen, and burgesses, some of which latter reside in the borough and parish, some in the neighbourhood, and others at a distance, are seised in fee in their corporate capacity of certain inclosed lands, to the amount of acres, and they are also in like manner seised of 2 or 300 acres of

Where a corporation was seised in fee of certain uninclosed lands, which were stocked with the cattle of the resident burgesses, or the widows of such, who alone were permitted

(a) See *Rex v. Sculcoates*, *ante*, pl. 101.

by the burgesses to claim such right, and also by poor parishioners who were admitted to such enjoyment from charity; and such lands were altogether omitted out of the poor-rate; the Sessions on appeal by one who had given notice of his objection to the parish officers, and to the corporation as the party interested under the stat. 41 G. 3. c. 23. s. 6. having quashed the rate, this Court confirmed that order.

uninclosed marsh lands, called *Aberavon Marsh*, worth 10s. an acre, and of about 100 acres of mountain, worth 5s. an acre. The inclosed land is annually parcelled out between the resident burgesses, who occupy the same as tenants, paying to the corporation certain rents according to the size and value. These inclosed lands are charged in the rate to the burgesses, the renters, as occupiers, in proportion to their several rents, and as such those burgesses pay the poor-rates, and also the land-tax, to which the inclosed lands are also rated. In the poor-rate the inclosed lands are charged under the title of "*The Burgesses land*," (which covers the three columns in the other part of the rate reserved for *landlords, tenements, and occupiers*), adding the person's name from whom the rate is collected, and the valuation of his occupation, and the sum to be collected. The corporation have not any live stock by which they can occupy, nor any personal chattels, except their maces and halberts. The uninclosed marsh and mountain have never been charged to either land-tax or poor-rate. They are occupied as common land by the individual burgesses or their widows who are residents, and keep stock to occupy; but those burgesses who have not any stock, or are non-resident, do not receive any benefit from the same. The burgesses do not permit any person but burgesses or their widows to claim a right of pasturage on these uninclosed lands, but they suffer by way of charity and in ease of the parish some poor persons who are residents, not being burgesses, to depasture there. Of those who depasture every person occupies according to the quantity of his stock, so that one occupier may have 18 head of cattle and 100 sheep, there being no limitation, and another not more than one cow, or one horse, or even one sheep. In the poor-rate in question the uninclosed marsh and mountain lands are, as usual, left out. And *D. J.* gave notice of appeal against the rate to the churchwardens and overseers of the poor of the parish, and also to the portreeve, aldermen, and burgesses of the town and borough of *Aberavon*, stating therein, as the ground of objection, that they had omitted to rate the marsh and mountain lands, called *Aberavon Marshes*, and *Aberavon Mountain*, all which said premises were in the possession or occupation of the said portreeve, aldermen, and burgesses. This notice was admitted to be well served on the churchwardens and overseers of the poor, and on the portreeve, aldermen, and two of the principal burgesses in their corporate capacity; but the majority of the resident burgesses and other persons who were occupiers of the said uninclosed lands were not served, and a number of out-dwelling burgesses within the county and jurisdiction of the court were not served. On the hearing of the appeal the questions before the Court were, first, Whether these uninclosed lands should, under the circumstances of the occupation, be rated at all? secondly, Whether, if they were rateable, the portreeve, aldermen, and burgesses were to be considered as occupiers, and to be rated as such, and notice of appeal to them in their corporate capacity to be deemed sufficient? or, Whether the several and respective burgesses and other persons who were the actual occupiers were not the persons to be rated, and that in proportion to their respective stocks? And if such persons were to be rated, Whether the Court could quash or amend the rate without such

persons first having notice under the stat. of the 41 G. 3. c. 23. § 6. which they had not? — LORD ELLENBOROUGH C. J. The case is very loosely and inaccurately drawn. We ought to have the right of enjoyment more distinctly stated. It does not appear whether the burgesses who turned stock on the common did so in right of their franchise, or by permission of the corporate body. I own I have great difficulty in deciding that a person who has a mere permission to turn his cattle on another's land is rateable as an occupier. — GAOSE J. The questions put at the end of the case might be very proper to be considered by the Sessions; but that is not the proper form of drawing up a case for the opinion of this Court. We can only say whether the Sessions have done legally in quashing the rate. — THE COURT then seemed inclined to send the case back to the Sessions to be restated; but after some further consultation on the bench, LORD ELLENBOROUGH C. J. said, on further consideration, I think we may deal with the case as it is. Here is a large track of property producing profit which is liable to be rated, and no person is, in fact, rated for it. This property is stated to belong to the corporation, and it may be doubtful whether the occupation shown be their occupation or that of individuals. Under these circumstances I cannot say that the Sessions have done wrong in quashing the rate. The rate, therefore, is quashed because no person has been rated for property which ought to have been rated. — PER CURIAM: Order of Sessions confirmed.

215. *Rez v. Cunningham*, M. T. 45 G. 3. 5 East, 478. — Upon the appeal of C. and others, iron masters, against a rate made for the relief of the poor of the parish of B. the rate was confirmed, subject to the opinion of this Court on the following case: C. and Co., who are lessees and occupiers of a large tract of land in the parish of B., and of several mines of iron ore and coal under the same, were assessed in the rate as follows: "For the farm and lands 92*l*. For the iron and coal mines 70*l*." The iron ore and coal which they raise is applied solely to the manufacturing of iron in furnaces built for that purpose, part of which is raised under the farms and lands rated, and part under the mountains. C. and Co. objected to the rate on the following grounds: First, That having been charged for part of the surface, they ought not to be separately charged for minerals under that surface. Secondly, That iron mines are not assessable to the poor's rate. Thirdly, That the coal itself, being raised for making iron, is also not liable to be assessed. — LORD ELLENBOROUGH C. J., said, that it was likely they would contend, and that with success, that iron mines were not rateable: and that though the coal-mines were rateable (concerning which it could make no difference whether the coal were sold by the owner to another who used it in an iron-foundry, or whether he applied it himself to the like purpose), yet being rated conjointly with something else which was not rateable, and the Court here having no means to ascertain the several proportions, so as to rectify the excess of the rate, they could do nothing else than quash the order of Sessions, which had confirmed the rate generally, such order being at all events wrong. And as the order of Sessions was certainly wrong in affirming the rate so framed, there was no objection to quash it. — Order of Sessions quashed.

Iron mines are not rateable to the relief of the poor; and being rated conjointly with coal mines, the coal whereof was raised by the owner of the lands for his own use in smelting the iron, the order of Sessions confirming such rate generally, without ascertaining the proportion at which each was rated, was quashed.

Where a corporation were seised in fee of lands, which by the custom were annually meted out under their control by a leet jury, according to a certain stint, to such of the resident burgesses who chose to stock the same; they paying 19s. 4d. to each of the other burgesses who did not stock: Held that the burgesses who so stock-ed were *tenants in common* of the lands so occupied by them, and as such occupiers were liable to be rated for the same.

(a) See *Rex v. Tewkesbury*, post, pl. 228.
Rex v. Mayor, &c. of Sudbury, post, pl. 244.

216. *Rex v. Watson* (a), M. T. 45 G. 3. 5 East, 480. — J. W. appealed to the Quarter Sessions for that borough against a poor's rate, because H., T., and G. were not rated for certain common lands, called the *Mill Common and Pitts*, situate in the parish of St. M., in, over, and upon which said lands the said H., T., and G., have certain commonable rights for feeding and depasturing their cattle, according to the custom of the said common and common lands, according to their respective rights as commoners using the same; and which said lands, so called the *Mill Common and Pitts* as aforesaid, are in the respective occupation of the said H., T., and G., for the purpose of enjoying the said commonable rights, and from which they actually do derive a local, visible, and beneficial advantage, by stocking, using, and feeding the same with their commonable cattle respectively, and therefore ought to be rated for the same. Upon hearing this appeal the justices confirmed the said rate, stating the following case for the opinion of this Court: That the mayor, aldermen, and burgesses of the borough of *Huntingdon* are the owners or proprietors of certain large tracts of land within the said borough, used as a common of pasture, and stocked by such resident burgesses of the said borough in right of their burgerships as think proper to stock, according to a stint annually fixed by the leet jury, who are burgesses of the borough, under the control of the mayor for the time being; part of which lands, namely, the *Mill Common and Pitts* mentioned in the notice, are in the parish of St. M., and part in other parishes in the said borough. That no part of the said common was ever assessed to the poor's rate. That there are about 80 resident burgesses who have rights of common, some of whom stock to the full of their rights, others partially, and some do not stock at all; but in the latter case receive an annual payment of 19s. 4d. in lieu thereof, which is paid by those who do stock. That the said H., T., and G., the persons named in the notice of appeal, are burgesses, having right to stock the common, and who did stock in the course of the year 1804. — ELLENBOROUGH C. J. The whole cloud which has been cast over the case arises from a misconception of the nature of the property occupied by these persons. It has been resembled to an incorporeal hereditament; but it is no such thing. The corporation are the owners in fee of the land, and they dole it out annually, according to the custom, to certain of the burgesses; such of them as take it paying a certain sum to those who do not turn on any stock. Then when the number of persons who stock it is ascertained, what is there to distinguish them from other tenants in common? Each of them might maintain trespass for an injury done to his occupation in common. It has been decided that a common in gross is a tenement, and it should seem from thence to follow that it is rateable: but without considering that, this case steers clear of all difficulty; for I do not consider this as an incorporeal hereditament, but as a corporeal tenement, of which the several burgesses who stock are tenants in common. And we cannot say that an enjoyment of land which is of such value as that those who do not actually enjoy it, but who might if they so pleased, are entitled to a compensation from those who do, is not something which is rateable; and being rateable, it must be rated in the hands of those

who have the beneficial possession of it. — GROSE J. This is in truth, a question whether the occupiers of land are rateable for that land. The portion of each is indeed small, but that can make no difference. This is common land belonging to a corporation, who deal it out annually amongst certain of the burgesses, and when they are ascertained, they are tenants in common of the land. Then have they any thing worth rating? It is stated, that there are 80 in number of them, and that each of those who do not stock receives annually 19s. 4d. in payment from those who do. This shows that those who do stock have a beneficial enjoyment of the land, for which they think it worth while to pay so much. — LAWRENCE J. This is the case of certain persons, who, having, as I understand the case, the exclusive enjoyment of land for a year for the purpose of turning on their cattle, are to be considered as tenants in common of it. The corporation are the owners of the land; the burgesses it seems are by the custom, entitled to have it divided amongst certain of them every year, according to a certain stint settled by the leet jury: when it is so meted out to them, they are tenants in common. I think it would be very difficult, after the land was so meted out, to say that the corporation could maintain trespass for any injury done on the land to the rights of these persons; because if that were so, it would show that the corporation were in the occupation of it. For as I said before, trespass can only be maintained by those who are possessed of the land. But, according to what I collect from this case, the resident burgesses are the occupiers. — LE BLANC J. It appears that there is a large track of commonable land, yielding profit, and the objection made is, that the commoners by whom it is stocked have not been rated for it. Then how does the case stand? The corporation are the owners of it. How is it enjoyed? Not by the corporation as a body; but it is every year meted out by them, according to the custom, amongst certain of the burgesses, by whom it is to be enjoyed for one year. It appears from hence, that the fee is vested in the corporation for the benefit of the resident burgesses. It is meted out annually to such of these as choose to stock, and those, who do not, receive a compensation from the rest. Those persons then are the actual occupiers of it. It is improper therefore to call it a right of common; because it is holden in fee by the corporation for the benefit of the resident burgesses. The corporation themselves, as a corporation, have no benefit from the land, but the resident burgesses to whom it is meted out annually by the leet jury. This view of the case avoids the difficulty stated in the argument of rating persons having a right of common running into several parishes: for this is a case of persons having an equitable right to the land, the fee of which is vested in the corporation for their benefit. — PER CURIAM: Let the rate be sent back to the Sessions to be amended by the insertion of the burgesses occupying the land.

217. *Rex v. Maddermarket*, H. T. 45 G. 3. 6 East, 182. — A. S. appealed against an assessment of 100*l.* stock charged upon her for the relief of the poor; and the justices allowed the appeal, subject to the opinion of this Court, on a case which stated in substance, that the appellant was assessed for 100*l.* stock, or personal property charged upon her by a rate duly made and

Under a local act, 10 Ann. c. 6. for rating persons to the relief of the poor in Norwich for lands,

&c. stock and personal estates in the parish, and money out at interest, they are not liable to be rated for government stocks or funds, which are no more than perpetual annuities, the principal of which can never be recalled by the holder from government, though redeemable at the pleasure of the latter.

allowed for the relief of the poor of the parish of *St. J.*, by virtue of a local statute of the 10 *Ann. c. 6.*, which enabled the churchwardens and overseers of the poor of the said parish, upon the authority of a certain warrant framed in the words of the said act, "to rate and assess the sum (of 137*l.* 11*s.* 10*d.*) on the inhabitants and on every parson and vicar, and on all and every the occupiers of lands, houses, tenements, tithes impropriate, appropriation of tithes, and on all persons having and using stocks and personal estates in the said parish (of *St. J.*), or having money out at interest, in equal proportion as near as may be according to their several and respective values and estates." And on hearing the said appeal it appeared to the said Court that ever since the passing of the said statute, lands, houses, tenements, stocks, and personal estates within the said city and county, and money out at interest as well without as within the said city and county, of the respective inhabitants within the several parishes of the same, have been constantly assessed to the poor's rates according to the circumstances of such inhabitants. That the appellant had not any stock or personal estate in the said parish of *St. J.*, or in any other parish or hamlet within the said city and county of *N.*, nor had any money out at interest on real or personal security; but that she was possessed of money vested in the public funds, or on government security, and then standing in her name in the books of the Governor and Company of the Bank of England, in the 5 per cent. Bank Annuities: and therefore the appellant admitted that the said assessment was just, if the said last mentioned money was liable to be rated. And the said Court being of opinion that money vested in the public funds or on government security was not by virtue of the aforesaid act liable to be rated to the relief of the poor, allowed the said appeal, and relieved the said *A. S.* from the said assessment of 100*l.* stock, charged upon her by the said rate. — ELLENBOROUGH C. J. Money out at interest, however the lender may stipulate not to call for the principal for a given period, is still a loan of money, with forbearance for a certain time. It implies that the principal is to be repaid at some time or other, when the lender will be entitled to receive it as money, and not a substitute for the principal in a mere annuity. But with respect to stock, the payment of the principal can never be compelled. All that the government engage for is a perpetual annuity, redeemable at their own will and pleasure. In a case of this sort we can only be guided by the plain sense of the words used by the legislature. We are upon the construction of the positive letter of the statute. It is admitted that if this species of property do not come within the words, having "money out at interest," it does not fall within any other description of property directed to be rated. Then can we say that stock is "money out at interest?" Money out at interest must mean that which is capable of being recalled at some time or other; money which may or may not be out at interest, and is only rateable when so used. Is that at all applicable to the funds where the whole principal money is sunk in an annuity and cannot be recalled, though in this stock parliament have reserved a power of redemption? If this then be not rateable within the particular local act, neither is it rateable within the stat. 43 *Eliz. c. 2.* (the only other statute by which it could be taxable) not

being local visible property within the parish. It is not, therefore, rateable under either statute.—GROSE J. Both the local act and the stat. 43 *Elix.* are very particular in enumerating different species of property subject to be rated. That this is not within any description of property mentioned within the parish is clear; and the only question is, Whether it must be considered within the description of *money out at interest*? But that does not mean money vested in annuities, but money lent, of which the lender may recal the principal, and the borrower is bound for the repayment of it. It is not, therefore, within any of the descriptions of property which the legislature have particularised. And it is more probable, if they had meant to have rated *stock*, they would have named it in terms, as they have done other things.—LAWRENCE J. If ability alone were the criterion of rating, all persons would be rateable in respect of their property whether locally and visibly situated within the parish or not: but it has been determined again and again that a person can only be rated for local visible property within the parish. The appellant was therefore not rateable under the general law; and for the reasons stated by my Brothers, I am of opinion that she was not rateable for her stock as for money out at interest.—Order of Sessions confirmed.

318. *Rex v. Bedworth, E. T. 47 G. 3. 8 East, 387.*—*J. W.* appealed against a poor rate for *B.*, in which he was assessed for a colliery, as of the annual value of 200*l.* at 5*l.* The Sessions amended the rate by striking out such assessment upon him, subject, &c. *W.* appealed against the rate, on the ground that long before and at the time of making the rate, he had ceased to work, occupy, or enjoy the colliery, and therefore was not liable to be rated for it. That by a lease made 16th of *January* 1777, the governors of an hospital at *B.*, demised all the mines of coal, &c. lying under the lands therein described in *B.*, for 42 years; at the clear yearly rent during the said term of 200*l.* at the least, and in all events, whatsoever the state of the said mines might at any time be, and whether any of the coal, &c. should be gotten or not. That *J. W.* entered upon the mines and continued to work the same till the 1st of *May* 1804; at which time all the coals within them were exhausted and worked out, and the mines ceased to be worked. That during the times the mines were worked, *J. W.* was rated for the same, in some years at a much larger amount than 200*l.* That from the time of his ceasing to work the said mines he was not rated till the making of the present rate.—The Court thought it unnecessary to hear counsel in support of the amended rate: and after *Rex v. Parrott (a)*, had been referred to, ELLENBOROUGH C. J. said; in that case the subject matter itself was profitable, and produced value to the owners, though the immediate occupiers derived no profit from it; all the net profits of the mine being absorbed by the sixth part of the gross value which they had covenanted to pay to the owners. But here the mine is itself exhausted, the subject matter of profit is gone, although the rent, which was no doubt calculated upon the probable average produce during the whole term, be still payable. The failure of the coal will not discharge the lessee's covenant to pay rent: perhaps he may have calculated upon that event; and may have received during the former part of his term an adequate

Where a coal mine becoming unproductive ceases to be worked, the lessee is no longer liable to be rated for it to the relief of the poor, although he be still bound by his covenant to pay the rent reserved to his landlord, *Aliter*, where the mine is itself productive although it be worked to a loss by the lessee, after deducting the proportion of the gross value of the produce reserved to the owner.

(a) *Ante*, pl. 202.

The owners of packet boats employed under a personal contract with the post masters in carrying the mails, &c. between *Holyhead* and *Dublin*, are liable in respect of the profits accruing to them from the carriage of passengers and luggage in such boats to be rated for the same in the parish of *Holyhead* where such owners reside, and from and to which the boats sail, where they are repaired, and where the passage money is in part receivable and is collected, though they are registered in another place.

(a) *Ante*, pl. 199.

value from the then produce of the mine to compensate the continuance of the rent to the end of the term. But with respect to the parish he is only rateable for the concurrent value during the period for which the rate is made; and when the thing which he occupies no longer affords any such concurrent value, the subject matter of the rating is gone. — Amended rate confirmed.

219. *Rex v. Jones*, T. T. 47 G. 3. 8 East, 451. — The defendants appealed against a poor rate for *H.*, in which "Captain *Jones*" was rated "for his packet, at 250*l.* — 6*l.* 5*s.*" and three other defendants, captains of packets, were respectively rated each for his packet, in the same sum. Rate confirmed, subject, &c. The appellants have all houses at *H.*, where their families at present reside. The packet boats are registered in the port of *B.*, and are employed in the service of government to carry mails, &c. between *H.* and *D.*, for which the appellants receive respectively as commanders an annual allowance or salary from government, but which does not equal the expences of the packet; but they have permission to carry on board their packet passengers, &c. whereby they make annual profits, which do not average less than the sum at which they are rated. It also appeared as the case was stated, that the packets were not the property even *pro tempore* of the crown, but belonged to the respective appellants, who at their own expence provided and kept them in repair, and engaged them in the service of the post office on certain terms. — *Holroyd*, in support of the order of Sessions, relied on *Rex v. White* (a), where it was decided that ships were rateable in the port to which they belonged. — *Park* and *Abbott*, contra, first contended that the case of *Rex v. White*, so far as respected the general question of the rateability of shipping, had been shaken in *Rex v. Liverpool*, H. T. 38 G. 3. and *Rex v. Collison*, E. T. 43 G. 3.; though the point was not expressly decided; — but LAWRENCE J. observed, that both these cases were defectively stated, and did not raise the general question; and that the Court only decided there that a person not *inhabiting* within a parish was not rateable there, merely because he had a ship registered at the port and lying there at the time. — They then argued generally that this species of property was not rateable. — ELLENBOROUGH C. J. I cannot distinguish this from the case of *Rex v. White*, and unless the Court felt themselves pressed to surrender the authority of that case, these packet boats must be held to be rateable. It is objected, that they are not permanently local property in the parish of *H.*, and that no profit is made of them there. But the inchoate act, which is to earn the profit, begins there; and therefore there is a part performance within the parish of that which is to make the profit by the use of the property in question. The boats are laid up there; they are repaired there; the owner dwells there; they yield profit there; for the passage money of the voyage from *D.* is actually earned there, and that of the voyage from *H.* to *D.* is at least begun to be earned in the parish of *H.* But whatever the question might be as between *D.* and *H.*, in this respect, it could only go to the *quantum*, with which we have no concern in this case: it is enough that this is what it is contended it ought to be, local visible property in the parish; that it yields some profit there cannot be doubted; and the owner resides in the same parish. This brings it completely within the

Pool case: and if the extent of the voyage, and the length of time during which the vessel is absent from its own port, could at all vary the consideration, these circumstances are more in favour of the rate in the present case. But independently of the authority of that decision, I think it rests upon sound reason; for the possession of such a vessel within the parish by an *inhabitant* actually residing there, and making profit of it, constitutes so much of his *local ability* to contribute to the maintenance of the poor of the parish, under the description in the statute of *Elizabeth*. — LAWRENCE J. The case of *Rex v. White* rules the present case, and unless we are prepared to overturn that, we cannot do otherwise than confirm the rate before us. (His Lordship then adverted to the cases of *Rex v. Liverpool* and *Rex v. White*, beforementioned, gave several reasons why these packets could not be considered as the property of government, and concluded as follows :) Then it is argued that this is not local visible property, producing profit within the parish; the case however states that the boats are built and repaired at *H.*; that the masters live there, and there hire the crews. There are no other places besides *H.* and *D.*, to which it can be pretended that these boats belong: but though there were the same poor laws in *D.* as here, I do not see how the boats, under these circumstances, could be rated there: though even that would only affect the quantum of the rate. It is said, however, that to make property rateable in any parish, it must be *permanent* in that parish, and produce profit there; and that this property is only made productive by going out of the parish. The same argument, however, applied with equal force, in the case of *Rex v. White*, where it was overruled. But why may not this property be said to be productive in the parish? The contract for the passage money from *H.* to *D.* is made at *H.*; and there is an inchoate inception of the voyage there: and that from *D.* is actually paid at *H.*, where the contract is completed. At any rate, however, this objection, if it could have place at all under these circumstances, would only go to the quantum; though at present I think the boats would not be rateable at all in *D.* — LE BLANC J. I am of opinion that these boats are local visible property in the parish where they are rated. The rate is made on the persons inhabiting within the parish, in respect of the packet boats there belonging to them: and the only question is, Whether this be that sort of property for which the parties are liable to be rated? The case of *Rex v. White* determined that the owner was liable to be rated for a ship in the parish to which it belonged, and where he himself lived. In this case I must consider that the packet boats are the property of the appellants, because they build and repair them: it is part of their respective capitals invested in shipping. The registry acts have no bearing upon this case. The only argument which has ever been drawn from them is, that they require that a ship should be registered at the port or place, at or near which the owner lives; and therefore that the registry in any port was to be taken as an indication of the owner's residence there. But here it expressly appears that these boats are the property of the appellants, who reside in the same parish from whence the boats sail, and to which they return. The contract which the appellants have entered into with government for carrying the mail cannot differ this

from the case of any ordinary contract for the carriage of the goods or persons of any individuals. Government indeed may deem it proper to stipulate for a certain number of seamen, &c. for securing a safe and convenient navigation of the boats; and the burthen of providing this superior accommodation may make the property less productive than a smaller establishment would do: but that does not vary the question of ownership; it only goes to the quantum of profit, with which we have no concern. This cannot therefore be considered as a rate on government, but upon the capital of these appellants, employed in this manner in the parish, and yielding them profit. — Rate confirmed.

Where the farmer is rated for the whole farm, it is no ground of objection to the rate by a third person, that a dairyman, who rented under him his stock of cows to be depastured on the same land, was not rated for such dairy, although it were stated in the case that the dairyman made a profit of the produce of the cows, independent of the profit made by the farmer; for the rate upon the farmer for the whole farm, includes all the profit of the land and stock appertaining to it.

(b) *Ante*, pl. 145.

(c) *Post*, 2 v. pl. 187.

(d) *Post*, 2 v. pl. 139.

(e) *Ante*, pl. 169.

(g) *Ante*, pl. 185.

220. *Rex v. Brown*, T. T. 47 G. 3. 8 East, 528. — T. B. appealed against a poor-rate for *Church Knowle*. Many grounds of appeal were stated, but all were abandoned (a) except the following, viz. because T. L. and four other persons (naming them) were omitted to be rated for and in respect of a dairy of cows, and the pasturage of lands in his and their respective occupations, yielding profit, and situate within the parish. On the trial of the appeal the following facts appeared: That the occupiers of several farms in the parish, who are rated to the poor for their respective farms, let their cows to an under-tenant, called a dairyman, at a certain rent *per cow*; which cows, by the agreement, are exclusively depastured on different grounds belonging to the occupier of the farm, at different times of the year; he being obliged to feed and maintain them without any expence to the dairyman: that the dairyman makes a profit of the milk, and produce of such cows, independently of the profit made by the tenant of the farm. The Sessions confirmed the rate, subject, &c. The cases of *The Queen v. Barking* (b), *Rex v. Piddletrenthide* (c), *Rex v. Tolpuddle* (d), *Rowls v. Gell* (e), and *Lord Bute v. Grindall* (g), were cited. — ELLENBOROUGH C. J. The appellant complains of the rate, without showing any grievance; because the farmer having been rated, as we must presume, for the full profit of the farm, it matters not to the appellant whether or not the rate in respect of that farm could have been better distributed by laying one portion of it on the farmer, and another portion of it on the dairyman; the appellant's proportion of the rate would remain the same in either case. It is said that the interest which the dairyman takes under such an agreement, is a tenement in law, and gives him an interest in the land, by which he may gain a settlement: and that I do not dispute; and therefore, if the dairyman, considering him and not the farmer, as the occupier of so much of the farm as the cows were depastured upon, had been rated as such for it, I do not see what objection could have been made. But here the objection is that the farmer is rated for the whole farm, the profits of which arise principally from the stock upon it; and a part of those profits are again required to be subjected to another rate in the hands of the dairyman. But there is no objection to the rate as it now stands; and great inconvenience would ensue if the profits of different persons out of the same farm were subdivided, and a proportional rate laid upon each, instead

(a) One ground of appeal was, that T. B. was not rateable for clay pits of which he made a profit; but this point was given up on the authority of *B. v. Woodland*, *ante*, pl. 212. *Rex v. Iwerbury*, *ante*, pl. 210.

one general rate for the whole, on the general occupier of the whole. A farmer may make a bargain with one man to let him have a field of grass to cut, or he may let the aftermath of his meadows, some to one and some to another; and this may not only vary every year, but every month or oftener, in the neighbourhood of populous towns. These are substantially the tenants of the land, while their subordinate interests subsist, and either might be rated for it during such holding; but if there be one general rate made on the general occupier of the whole farm, including all these particular profits and subdivisions of interest, by which, in fact, he is benefited, who can say that he is injured by the rating of one for the whole, rather than the several sub-tenants of those partial interests for their respective proportions, deducting the value of them from the rate upon the general occupier? And as to the convenience of the general rate for the whole, there can be no question of it. Other cases may be put; the owner of a house and garden may let the profits of his garden to his gardener, retaining the use of it in other respects, upon condition of the latter supplying his table with certain articles, or upon a rent; and though the gardener might be rated for this interest, yet if the owner were rated for his house and garden, what objection could any other person make to the rate on that account? The principle is, that the estate which has once paid shall not be made to pay again: and yet in all these cases it may be truly said that some profit is made by the sub-holder, beyond what the general occupier receives. What was said by Lord Mansfield in *Lord Bute v. Grindall* (a) does not contradict this; that where there was a proportion of the profits of the land rateable in the hands of the tenant, which was not rateable in the hands of the crown, the tenant was assessable for it. But here the whole having been rated in the hands of the farmer, nothing remains to be assessed in the hands of the under-tenant. It would be a different question if a farmer derived profit from stock kept on his farm but not connected with the management of it; as if he kept a large stock of cattle there, which he fed with oil cake for sale: there he would be separately rated for it, not as stock of his farm, but as stock generally, from which he derived a separate and distinct profit. But here the dairy cows are, properly speaking, the stock of the farm. And as to any separate profit derived from them to the dairyman distinct from the farmer, the same might be said of a man to whom the farmer sold milk by pails full on the premises, and who, after mixing it with water, retailed it again at a profit. — *GROSS J.* The question is, whether the appellant has any ground of complaint. He complains of being rated too much, because certain persons renting dairies in the parish have been omitted in the rate. But it appears that though those persons be not rated, others are so, for the same subject matter; because the profits derived from the stock of cows on the farm have in effect been once rated; being included in the rate upon the farmer for the profits of the whole farm, of which they constitute part. — *LAWRENCE J.* It is contended that the dairymen are liable to be rated for their dairies on two grounds: 1st, That a dairy is a tenement, the taking and occupying of which is capable of conferring a settlement, and that every occupier of a tenement is liable to be rated in respect of it. That may be so; but the ground of appeal is,

(a) *Ante*, pl. 185.

that the appellant is injured by the omission of these persons in the rate. But if it appear that others are rated for the whole value of the farms, including the profits of the cows depastured upon them, and that the appellant sustains no injury in any way, the ground of appeal fails. Then, secondly, it is said that the cows are personal property, and that the dairymen are liable to be rated for the profits made by such stock. But this is the stock by which the farm is rendered productive, and having been once taxed in effect, in respect of the produce, in the hands of the farmer, is the produce to be rated again as milk, in the hands of the dairyman? By the same rule, might it not be rated again as butter, and again as cheese, in the hands of the same person, on account of the additional profit which may be made of it in each of these stages? This would be carrying the principle of rating much further than it has gone before. It would be very inconvenient to parishes to subdivide the rate in the manner proposed. If a person taking the aftermath of a meadow is to be rated for it, instead of including it in the rate for the whole farm, what is to be done when this is taken, as it frequently is, by drovers of cattle, passing along the road, who depart again in a few days, and are no where to be heard of? Experiments of this sort, if carried into effect, would only introduce confusion: the amount of the rate would be the same; for if by underletting the aftermath the original renter make more of the land, he is rateable in proportion: and it will be found much more advantageous to the parishioners at large to abide by the old practice, and to lay one entire rate on the whole farm in the hands of the general occupier. — LE BLANC J. I am surprised that the Sessions should have reserved any case upon the application of this appellant, when the only question was, Whether, with respect to him, this were an equal rate, or whether injustice had been done him by the omission of the dairymen in the rate? For supposing it to be a question, whether the farmer or the dairyman were in possession of the property to be rated, and that it were a case of doubtful occupation; yet when it appears that one of them has been assessed for the whole property, and that neither of them complained of the rate, what pretence can there be for setting aside or altering the rate, at the instance of a third person, who has no interest in that question, in order to decide a question of doubtful possession between the other two? Taking it, however, as a case between the farmer and the dairyman; it is true that the taking of a dairy in this manner has been held to give a settlement, as upon the taking of a tenement; but it has only been held to be a tenement in respect of the interest in the land on which the cows are agreed to be depastured; but the farmer has the general interest in the whole land, out of which the other interest is carved: the cows fed upon it are his own; they are his stock: the dairyman is to have the care of them, and the trouble of milking them; and the profits arising from the produce of the cows, in consideration of a certain sum which he agreed to give the farmer. Then what is this in effect more than the farmer making this profit of his land and of his stock, by the general agreement with the dairyman, instead of employing his own dairyman to milk the cows, and afterwards disposing of the produce when made into butter or cheese? It is a mode of selling the milk of his cows. Then it is said, that the dairyman is rate

able as for his personal stock; he has no capital of his own; but he only makes a profit by his personal labour out of the capital of another person. — Rate confirmed.

221. *Rex v. Sherborne* (a), T. T. 47 G. 3. 8th East, 537. — In a poor-rate for S., W. B. and J. A. were rated for stock, meaning stock in trade; they appealed, and at the hearing of the appeal the following facts appeared: That the appellants were rated for their stock; that it had been usual to rate persons for their personal estate within the parish; that the appellants were silk-throwsters, and in possession of certain buildings and mills in S., in which the business of cleaning, spinning, and throwing silk is carried on by persons employed by them; that the appellants are in the course of receiving from their employers in L. raw silk packages, which they clean, spin, and throw in different ways, according to the directions they receive; that when it has gone through such process in their mills, they return the same silk in its improved state to their employers, charging a certain sum to them for every pound so returned, by which they make a profit, after paying the wages of their workmen, and other expences attending the manufacture; that they have always some silk of this description in their possession; that the said silk is never exposed to sale by them, nor is longer in their possession than is necessary to give them time to clean, spin, and throw the same according to the directions they receive. The Sessions amended the rate by striking out the names of the appellants, subject to the opinion of this Court on these facts. — THE COURT said it was impossible to call the silk the stock in trade of the appellants, who were employed to work it up; it was nothing like stock, in the sense in which it had always been understood, as the subject of rating. And confirmed the order of Sessions without argument.

Silk throwsters working up in their mills the silk of their employers, sent to them for that purpose, are not liable to be rated in that respect, as for their stock in trade.

(a) *Vide Rex v. Dursley*, ante, pl. 203.

222. *Rex v. St. George, Middlesex*, M. T. 48 G. 3. 9 East, 127. — By the construction of the statute 39 & 40 G. 3. c. 47., the London Dock Company are liable even during the first twelve years of their establishment, to be rated for the fair annual value of their warehouses, and other works which are finished and productive, though all the works directed by the act be not completed. But such completed works must, under such circumstances, be rated for their value at the rate of 8½d. in the pound, such being the rate calculated upon by the legislature to raise 139l. 8s. 7d. per quarter upon 3966l. the average rental for ten years preceding the act of parliament, on the premises destroyed by the company in making their works and which quarterly sum the company were at all events bound to pay to the parish during the twelve years, or until the works, were completed, whether those works were productive or not. But when productive beyond that sum the surplus is to be taken in the first instance by the company, in order to reimburse themselves what they may have advanced to the parish to make good the deficiencies before any such productive surplus existed until the company shall be reimbursed. Therefore, until these purposes are effected, a rate made on the increased real value of the old dock premises at more than 8½d. in the pound, or a rate of 8½d. in the pound on the old average value of the premises before the erection of the company's works, and below the increased value of the new works, is in either case bad.

As to the rateability of the London Dock Company.

Saleable underwoods are rateable annually to the relief of the poor in proportion to their value, though they should happen not to be cut down more than once in twenty-one years.

(a) *Vide* Aubrey v. Fisher, 10 East, 446.

223. *Rex v. Mirfield (a)*, T. T. 48 G. 3. 10 East, 219. — R. H. B. appealed against a poor-rate for *M.* in which he was rated for certain underwoods. The Sessions quashed the rate, subject, &c. The underwoods, for which the appellant was rated, are usually sold and cut down once in twenty-one years; and when so sold and cut down produce actual profit to the appellant, and not before. These underwoods have not been cut down and sold for ten years past, but are now standing to complete twenty-one years' growth. — LORD ELLENBOROUGH C. J. This was an appeal against a poor-rate for the parish of *M.*, in which the appellant was rated for some underwoods. The underwoods were such as are usually cut down once in twenty-one years, and in the year they are cut they produce profit, but in other years they are stated as producing none. At the time of the rate they were of ten years' standing. The Sessions thought them not rateable, and therefore quashed the rate; but submitted the question to this Court, Whether they were liable to be rated every year, according to the annual average value thereof; or whether they should be rated *then* only, when they are cut down and produce actual profit? Among the several descriptions of persons whom the statute 43 Eliz. c. 2. makes rateable, the occupier of *saleable underwoods* is one; and the question is, whether they can be deemed *saleable* underwoods, except in the year in which they are cut down. The word *saleable* has not a very precise definite meaning; it may mean when they are in a fit state for sale, referring to the time when they are cut; or it may mean such as are intended or destined for sale, in contradistinction to such as are to supply the land with estovers for fuel, and the other purposes of the estate. In the former of these cases, they would only be rateable in the year in which they are cut: in the latter, they would be rateable at all times; and we think, after full consideration of the subject, that the latter is the proper meaning. If they are rateable at all times, they will contribute according to their value, in exact proportion with the rest of the property in the parish: but if they are rateable in that year only in which they are cut, the sum they may have to contribute may materially vary, according to the proportion their value bears in that year to the rateable property of the rest of the parish, and may be much greater or much less than the aggregate sum it would pay if it were rateable at all times. Suppose the underwoods in the year they are cut would produce a clear 1000*l.*; that the sum to be raised in the parish *communibus annis* is 100*l.*; and that the annual value of the rest of the property in the parish is 980*l.*: if the underwoods be rated at 20*l.* a year, which may be the rent they would produce upon a twenty-one years' lease, the rates would amount to two shillings in the pound, and the underwoods would contribute annually *forty shillings*: if they were rated only in the year they were cut, a shilling rate would then be sufficient, and they would contribute rather more than 50*l.* So far there would be no injustice. But suppose the rest of the parish to be worth 10,000*l.*, the underwoods would, supposing them as before to be rated at 20*l.*, contribute annually about four shillings; whereas, if rated in the year of cutting they would contribute in the proportion which 1000*l.* bear to 10,000*l.*; that is, the eleventh part of the whole rate of 100*l.* which in money is 9*l.* and a fraction. As 50*l.* then is only

twenty-five times forty shillings, and 9*l.* is forty-five times four shillings, the disproportion in the two cases put is obvious, and the difference to all parties, whether the rating be annual, or in the cutting year only, considerable. Again, suppose the annual value of the parish 6000*l.*, and the annual sum to be raised still 100*l.*, the rates will be four pence in the pound, and the underwoods will pay annually 6*s.* 8*d.* upon their same supposed value of 20*l.*; whereas, if they paid in the cutting year only, they would pay 14*l.* 5*s.* 8*d.*, which is above forty-two times 6*s.* 8*d.* Put the annual value of the parish at 500*l.*, the rates to raise 100*l.* must be four shillings in the pound, but in the cutting year they would be only 1*s.* 4*d.* The underwoods would contribute in ordinary years, upon the last-mentioned assumption of the annual value of the rateable property in the parish 4*l.* annually, whereas in the cutting year they would contribute little less than twenty times that sum, viz. 7*l.* It is hardly necessary to state, that a mode of rating, which might produce such difference to the owners of this description of property, and to the parish, if he contributed only in the cutting year, cannot be the true rule; and the only other rule is a constant contribution, which will at all times fall equally upon this and every other species of property. The objection to this, in argument, is, that the property ought not to be rated until the produce of it has been severed from the land, and until it has supplied the occupier with the means of paying. But we are of opinion, that it is not necessary, that any of the profits should have been actually reaped or taken from the property during the period for which the rate is made; but that the property is at all times rateable according to the improvement in its value, or in the rent which might fairly be expected from it. Instances continually occur in which the occupier is rated, though he has derived no profit during the period for which the rate is made. A new tenant upon an arable farm reaps none of the produce till the autumn after his tenancy commenced, and yet he must pay up to that autumn according to the rent or value of the estate. He must pay before-hand for the future probable produce. His farm is constantly in a progressive state towards producing profit; and he pays for that progress. So underwoods are annually improving in value, and the rates the occupier pays are for that improvement. This may possibly be hard upon tenants for life; but if the laws have thrown this burthen upon the property, they take it with the burthen. We think for the reasons we have mentioned, that the case has so thrown it, that the property is at all times liable to be rated whenever rates are made, and consequently that the order of Sessions ought to be quashed, and the rate confirmed.

224. *Rex v. Aberystwith*, M. T. 49 G. 3. 10 East, 354. — *R. W.* One who went appealed against a warrant of distress (a) for the non-payment of certain poor-rates; the Sessions quashed the warrant of distress, subject, &c. The appellant has kept a house in A. many years, and having been surgeon of the C. militia, was occasionally absent from home; and sometimes his family, leaving one J. F. his

from home with his family for nearly a year, but left his assistant to carry on his business

(a) One point intended to be made point the Court of King's Bench gave was, as to the right of appeal against no opinion. a warrant of distress, but upon that

in his shop in one room of the house, which for this purpose was parted off by laths from the rest, and left the key of the house-door with a friend, and had the garden cultivated for his own benefit as usual, is liable to be rated to the relief of the poor as the occupier of the whole house.

assistant in a part of the house. In *July* 1806, the appellant being previously absent, his wife and daughter left the house, having previously had the same parted off from the shop by laths nailed in the passage, so that *J. F.* had only the use of the shop. The family did not return till *May* 1807; and during their absence a *Mrs. H.*, a person with whom the key of the house was left, had the garden dug up by the same person who always dug it, and who charged the appellant for his work, and looked to no other person to pay him for it. *Mrs. H.* always permitted two persons, *Mrs. S.* and *Mrs. L.*, one of whom was a particular friend of the appellant's, with their servants, to reside in the house six weeks or two months during the time the appellant's family were absent; and the appellant's furniture continued in its usual situation in all the rooms of the house, ready for the reception of the family, during the whole time. Coals were delivered into the house: and all parts of the house (save the shop) communicated with the garden, through which the above-mentioned persons and others entered the house. The rates were made between *July* 1806 and *May* 1807. (a) The question for the opinion of the Court was, Whether there was a sufficient occupancy by the appellant to charge him with the rates? — LORD ELLENBOROUGH C. J. The appellant must be taken to have been the occupier of his house during the whole period. He left his home for a time; but he left part of his house in the occupation of his assistant, who carried on his business in his absence; and the key of the house was left with a friend, and the garden continued to be cultivated for his own benefit as usual; to say nothing of the occupation of his friends during his absence. There has been no instance where a man has been permitted to carve out the occupation of his house in the manner now attempted; locking up one room, and then another, but using as much of the house as he found convenient. This would make a new system of occupation by subdivisions. This is something like *Rex v. St. Mary the Less.* (b) — Order of Sessions quashed, and rate confirmed.

(b) *Ante*, pl. 197.

The tolls of a light-house, situated in the township of *Tynemouth*, which tolls were collected out of the township in the several ports at which the vessels passing by the coast afterwards arrived, are not rateable *quod tolls* in the township. And the residence in such light-house by one, as servant to the owner, at an

225. *Rex v. Tynemouth*, *H. T.* 50 G. 3. 12 *East*, 46. — *W. F.* appealed against a poor-rate for *T.*; the Sessions amended the rate, by striking out *Mr. F.*'s name, and that of *R. W.*, his servant, subject, &c. *Mr. F.* is legally entitled to *T.* light-house, and to certain tolls payable in respect thereof from vessels belonging to or trading to the ports of *N.* and *S.* The light-house is in *T.*, but the ships from which the tolls and duties arise never come within the township of *T.*, and neither *Mr. F.* nor any of the receivers of the tolls or duties reside in *T.* The tolls and duties are paid at the several ports from which the vessels sail, or at which they arrive, to agents of *Mr. F.*, stationed at such ports. *R. W.* is a servant of *Mr. F.* at an annual salary, and resides in two rooms within the walls of the light-house, to take care of the light: and he is rated for those two rooms as occupier at 6*l.*, and *Mr. F.* is rated for the tolls, in respect of the light-house, at 75*0l.* Two questions were reserved by the Sessions; first, Whether *Mr. F.* is rateable for the tolls in respect of the light-house? secondly, Whether *R. W.* be rateable for the two rooms in *T.* light-house? *Re*

(a) There were two rates also made subsequently to the family's return but no question arose upon them.

v. Reboue (a) was cited. — ELLENBOROUGH C. J. It is no question now, whether this property could be rated in some other way; as if the light-house, whose light is the meritorious cause of earning the tolls, were in consequence let at a larger rent; but this is a rate especially upon the tolls, and therefore the case is not distinguishable from *Rex v. Reboue*, which is so immediately in specie, and in all its circumstances the same, and has been so long considered and acted upon as law, that it concludes the question. What local property is there within the township on which this rate on the tolls can be levied? The tolls are not received there; nor do the ships from which they are collected come within the township; the subject matter of the rate has no locality within the township. As to the other point, it is equally clear that it is the occupation of the master by his servant, and not the occupation of the servant himself; and therefore the rate on the servant is bad on that ground. — Order of Sessions confirmed.

annual salary to take care of the light, is the occupation of the master, who alone can be rated in respect of such occupation of the toll-house.

(a) *Ante*, pl. 166.

226. *Rex v. Sir A. Macdonald*, E. T: 50 G. 3. 12 East, 324. — Sir A. Macdonald and others, trustees of the late Duke of B., appealed against a poor-rate for M., in which they were assessed as such trustees for the dues and rates of *Rochdale* canal, tunnel and lock, at 140*l.* 12*s.* 6*d.*, and for several warehouses and wharfs belonging to the canal at 324*l.* 7*s.* 6*d.* Rate confirmed, subject, &c. The appellants were not, at the time of making the assessment, inhabitants of M., but were then and still are entitled to, and in the receipt of the tonnage, in respect of vessels passing through the lock built upon the *Rochdale* canal, under an act of the 34 G. 3., the second section of which, reciting that, "Whereas Francis Duke of B., hath expended a considerable sum in making wharfs, for the convenience of the public, adjoining or near to his canal at M., and when the proposed junction is made with his canal, the profits arising from those wharfs will be considerably diminished; nevertheless he consents to such junction on being authorised to build a lock upon the *Rochdale* canal near the junction, and to collect certain rates hereinafter mentioned, as a compensation for such diminution in the profits of his wharfage;" authorises the duke, his heirs and assigns, at his and their own expense, to build a proper lock upon the said *Rochdale* canal, at or near *Castle Field*, &c. and all necessary works thereto belonging; and to take at the said lock for his and their own benefit (as a compensation for the diminution in the profits of his wharfage as aforesaid) the following rates, viz. (and then it gives certain rates per ton for goods carried and navigated from the *Rochdale* canal into the canal belonging to the duke, and vice versa,) "which rates shall be payable and paid at or near the said lock to the said duke, his heirs and assigns, and shall be collected by such person as the said duke, &c. shall by writing, &c. appoint to receive the same." The lock was built in pursuance of the act. The tonnage amounts to as much as it is charged at in the assessment. The appellants, at the time of making the assessment, were and still are in the occupation of the lock, and of the several warehouses and wharfs mentioned therein, and the same are of the value assessed. The case then set forth the names of several individuals on whom notices of appeal were served, who were at the time of making the assessment, and still are inhabitants of M., and were then, and still are, respectively

An act of parliament having empowered the Duke of *Bridgewater* to erect a lock upon the *Rochdale* canal, and to receive at such lock certain rates or tolls upon goods in vessels navigated from that canal into his own, as a compensation for the profits arising to him from certain wharfs at *Manchester*, which were sacrificed for the public benefit in that navigation: Held, that a poor's-rate on his trustees, occupiers of the "*Rochdale* canal lock," tunnel dues or rates," (which dues or tolls are only other names for the lock rated therewith) is good, though the trustees were found not to be inhabitants of the township for which the rate was made. Though the

Sessions find that certain persons in a township are possessed of visible stocks in trade there, and are personally liable to be rated in respect thereof, if by law such property be liable to be rated; yet if they also state that they are not satisfied, from the evidence offered before them, that there was any surplus profit on such stocks, by which they could amend a rate which omitted them, that concludes the question.

possessed of visible stocks in trade in that township; and were then personally liable to be assessed to the relief of the poor in respect thereof, if by law such property be liable to be rated in such assessment: but that neither of those individuals were rated in respect of their said stocks in trade or other personal property; neither were any inhabitants of *M.* or other persons rated in respect of their personal property in the township, although personal property was immemorially rated in that township down to the year 1796, and occasionally collected up to that time; but this merely at nominal sums, having no relation to the actual value of the property; and from thence rated (but not collected) down to the year 1807; from which latter period personal property had not at all been rated in the township. The proprietors of the *Rochdale* canal company are not rated for their locks upon the said canal situated within the township, or for the tonnage, tolls, duties, or rates, arising from such locks, or otherwise from the said canal within *M.*; this being provided for by the statute 47 G. 3. entitled, "An Act to alter and amend the several acts for making and maintaining the *Rochdale* canal navigation." The case also stated the names of other persons, who, at the time of making the assessment, were, and still are, owners of annual chief or ground rents; one to the amount of 100*l.* and 50*l.*, another of 22*l.* 7*s.* 6*d.*, another of 7*l.* 1*s.* 8*d.*, and another of 10*l.*, issuing and payable from lands and buildings in *M.* in the possession of their several tenants; all which owners of quit or ground rents were then and still are inhabitants of the township; but are not rated in respect of such repts, nor is any person assessed in respect of rents issuing out of lands and tenements in the township: but the counsel for the appellants made no point upon the subject of the quit rents. In addition to the proof already given, the appellants gave further evidence of the amount of the clear surplus of stock in trade or other personal property, in the instances of the several persons contained in the notice of appeal; and called two witnesses to give this proof in the cases of two of the persons named: but the justices not being satisfied, from the evidence offered, that there was any sum of surplus by which they could amend the rate, by adding the names of the persons in respect of whom such further evidence was given, confirmed the rate. — Against the rate it was contended, that this was in effect a rate upon the *dues* or *rates* payable at the lock, and not a rate upon the lock itself; and on the second point it was argued shortly on the unreasonableness of the conclusion drawn by the Sessions. — ELLENBOROUGH C. J. The Court will not involve themselves in any contradiction to the cases which have been decided, by discharging the rule for quashing the order of Sessions in this case. First as to the omission of rating stock in trade in *M.* In order to include particular individuals in the rate, a case must be made out in evidence against those individuals; here there was an attempt to do it by the appellants, but they failed in satisfying the Court below upon the facts. We have no concern with the conclusion of fact which the justices have drawn as they state it to us; and I do not say that I should have come to the same conclusion; but the justices have only found that certain persons, inhabitants of *M.* were possessed at the time of visible stocks in trade within the township, and were personally liable to be assessed to the poor.

rate in respect thereof, if by law such property be liable to be rated. Now visible property in the place, such as stock in trade, merely as being *visible*, is not liable to be rated; but to make it rateable it must also be *productive*; but the justices have found that it was not productive, or what is the same in effect, that it was not proved to be so to their satisfaction: that finding concludes the question. And then the remaining question stands on the rateability of the property of the trustees. The case states that they are the occupiers of *the lock*, and of the several wharfs and warehouses mentioned in the rate; and it is not disputed that the property rated yields profit; but it is objected that they are rated for *dues* or *rates*, that is, for the tolls payable at the lock under the act of parliament; and that the Court have held tolls not to be rateable. But the Court have only said that tolls are not rateable *per se*, but only when connected and rated conjunctively with real and substantial property, situated in the parish, which, as yielding profit there by means of the tolls, is the proper subject of rating within the act of *Elizabeth*. Now here the lock itself is rated, which is something real and substantial, locally situated in the township, and producing profit, and the addition of the *dues* or *rates* is merely giving other names for the same thing. These dues or rates are given by the act of parliament as a compensation to the Duke of B. for the loss of his profits of certain wharfs adjoining to his canal at M., which wharfs were before clearly rateable in respect of those profits: the rates, therefore, made payable at the lock were substituted as a compensation for and in lieu of the wharfrage before enjoyed; they are the substituted medium of profit arising, as the act describes it, from those wharfs. The Court, therefore, by this decision, will not break in upon that which they have recently decided, that tolls *per se* and when not mixed with a rate upon other property, which, as having substance and locality within the parish, is properly rateable there, are not liable to be rated. — The other Judges concurring, the rate and order of Sessions confirmed.

227. *Rex v. Bishop of Rochester, and others*, E. T. 50 G. 3. 12 East, 353. — The trustees appealed against a poor's rate for H., in which they, being lessors in the lease after-mentioned, were rated in the sum of 50*l.*, being one moiety of the certain rent of 100*l.* reserved by the said lease. The Sessions confirmed the rate, subject, &c. The rent was reserved under an indenture of lease, dated the 30th of May 1805, and made between the said trustees of the one part, and A. S. and others of the other part, whereby the trustees demised to the lessees "all the mines, "veins, &c. parcels, and wastes of lead ore, and other minerals "and fossils, and also all the seams of coal then open or discovered, or which should or might, during the time therein mentioned, be opened or discovered, within, under, or upon the "township lands, called N., in the parish of H., and within certain other lands therein-mentioned; together with full liberty "and authority for the lessees to dig and search for pits, &c. "under any of the said lands, for getting all the lead ore, minerals, "and coals, in or upon the said mining grounds; to hold the "demised premises to the lessees for the term of twenty-one "years, yielding and paying therefore, yearly, during the said "term, unto the said lessors, their heirs, &c. for and in respect of

Landlords not resident within the parish, having leased lead mines and other minerals, with liberty to the tenants to dig, &c. reserving a certain annua rent, and also certain proportions of the ore which should be raised, are at any rate not assessable to the relief of the poor for such certain rent, no ore being raised; whatever the question might be as to the pro-

portion of ore reserved, when in fact any should be raised.

"the said *lead ore and other minerals*, the clear yearly rent or "sum of 100*l.*" payable half-yearly. There were also reserved, by way of rent, certain proportions of such lead ore as should be gotten from and out of the said mining grounds. There was also a separate rent reserved for the coals, when wrought, and a rent for damages done to the ground tenants. The lessees were bound to pay all manner of taxes, rates, assessments, and impositions, whatsoever, parliamentary or parochial, already or thereafter to be taxed on the demised premises, or on the lead ore, or other minerals, coals, or fossils gotten thereout, or on the lessors or lessees in respect thereof. The case also stated, that no coal mines had been wrought within the grounds mentioned in the lease. That the lessees had other lead mines in the neighbourhood, but had gotten no ore from under the grounds of the lessors mentioned in the lease, and consequently no proportion of lead ore had been rendered or become due to the lessors. The lessors stood rated in 50*l.*, being a moiety of the certain rent of 100*l.* reserved by the lease, and which was deemed a fair proportion for that part of the mining ground which is in the parish of *H.*; and the lessors, if liable at all, did not object to the fairness of the apportionment. None of the lessors reside or have any dwelling-house in *H.*—In support of the rate the authority of *Rowls v. Gell* (a), where the owner (lessee under the Crown) of lead mines was held rateable to the poor for the profits of *lot and cope*, was principally relied on, though the pressure of the recent decision of the Court in *Williams v. Jones* (b) was admitted. — ELLENBOROUGH C. J. The trustees can only be rated as inhabitants or as occupiers within the parish. We have so recently in *Rex v. Nicholson* (c) and *Williams v. Jones* put a construction upon the word *inhabitant*, in the statute of *Elizabeth*, as meaning a *resident* within the parish, that it is unnecessary to discuss the matter again; and the fact of such an inhabitancy is negatived by the case. Neither are they *occupiers* of the property for which they are rated; so far from it, that they cannot maintain trespass for an injury done to the property which they are supposed to occupy: and even if they were the actual occupiers of coal mines, they would not be rateable for them before they were worked and productive. But this is no more than a contract with tenants for the payment of a certain rent for ores supposed to lie under the surface; and if the tenants should open the ground and raise the ore, reserving a certain proportion of ore to the ground landlords, there is no occupation of any thing within the statute. If hereafter the tenants should open the ground and raise ore, the trustees will then be entitled to certain proportions, and such profits may come within a different rule, as *lot and cope*; upon which no question at present arises, and therefore it is unnecessary to say any thing. — LE BLANC J. If the trustees were rateable at all, it must be as occupiers of the mines or some proportion of them; but here they are rated as for a *rent eo nomine*, for which, if they were rateable, every landlord might, by the same rule, be rated for his rent. — GROSE J. and BAYLEY J. assented. — Order quashed.

An act of the 48 G. 3. having vested the aftermath of a

228. *Rex v. Trustees for the Burgesses, &c. of Tewkesbury*, *M. T.* 51 G. 3. 13 *East*, 155. — The trustees for the burgesses, &c. of *Tewkesbury* appealed against a poor rate for the parish of

T. in which they were rated for the '*Aftermath of the Severn Ham*,' 16l. 10s. Rate confirmed, subject, &c. By an act of the 48 G. 3., intituled, "An Act for inclosing lands in T., and for vesting the after or latter-math of a meadow called *Severn Ham* within the borough and parish, in trustees for certain purposes," a right of common in the said *Severn Ham* to which certain burgesses, &c. were theretofore entitled from the 12th of August to 13th of February, in every year, was taken away, and in lieu thereof, the after or latter-math of the said meadow was vested in the trustees (*appellants*) and their successors upon certain trusts. By the said act it was further enacted, "that it should and might be lawful to and for the said trustees, at any of their meetings, to be holden in pursuance of that act, and they were empowered, to let and set annually the after or latter-math of the said meadow called *Severn Ham*, so vested in them as aforesaid, or any part or parts thereof, to any person or persons whomsoever, at the best and most improved yearly rent or rents that could be reasonably had or obtained for the same; and also to let and set the after or latter-math of the said meadow called *Severn Ham*, in pasture for horses, cattle, and sheep, to different persons, at such rates, and subject to such rules and regulations, as the said trustees should (subject to the restrictions in that act contained) from time to time appoint; or by writing under their hands and seals, to lease or demise the after or latter-math of the said meadow called *Severn Ham*, (subject to such restrictions as aforesaid) to any person or persons whomsoever, for such term or number of years, and in such manner, as by the said act is described." The rents and profits arising from the latter or after-math of the said meadow, to be divided between such burgesses, &c. as before possessed the right of common. On the 12th of August 1809, the trustees let the said after-math out in pastures, at a certain sum per head for horses, cattle, and sheep, to various persons, under the authority of the said act, for sums of money amounting together to 295l. The several persons who took the after-math in pastures, enjoyed the same by turning in their cattle from the 12th of August 1809, to the 13th of February 1810, and the trustees did not occupy it, unless such letting and enjoyment in pursuance thereof amount in law to an occupation by them. The question was, Whether the trustees were liable to be rated in respect of the after or latter-math? — ELLENBOROUGH C. J. What is letting out in pastures more than taking in cattle to agist? — In the case of *R. v. Watson* (a), the corporation could not take in the cattle of a stranger; but here the trustees may contract with any persons to take in their cattle by the year, or by the month, or week; and here, not being able to let it altogether, they took in the cattle of different persons at so much a head. Who then can be said to be the occupiers if they are not in this case? The letting is at so much a head without any definite time, or for any definite portion of the after-math; nor were the trustees bound to limit the number of cattle, though they might have done so. — GROSE J. agreed. — LE BLANC J. The persons whose cattle were taken in had no definite portion of the after-math let to them. — BAYLEY J. In the *Huntingdon* case (b), the portions of those who had a right to stock were ascertained; but here there was nothing to limit

certain meadow in trustees upon certain trusts, with power to let the said after-math in pastures for horses, &c. or to demise the same for a term of years: Held, that the trustees, having let out the after-math in pastures (as it was called) at so much a head for horses, &c. to various persons, for no certain term, and in no certain proportions, must themselves be taken to be the occupiers of the land.

(a) *Ante*, pl. 216.

(b) *Ante*, pl. 216.

the trustees from taking in others. — Order of Sessions confirmed.

The trustees of a Methodist chapel receiving money annually for the rent of the pews, are rateable for the profits made of the building, though in fact they expended the whole of what they receive in making disbursements for repairs, &c., and to attendants in the chapel, and in paying the salaries of the preachers.

229. *Rex v. Agar*, T. T. 51 G. 3. 14 East, 256. — The defendants appealed against a poor-rate for St. M., in which they were rated for a Methodist chapel, at 20*l.* rent. Rate confirmed, subject, &c. In 1804 the appellants purchased a piece of ground, upon which, by means of voluntary contributions, they erected the chapel in question, which was duly registered under the toleration act; and by indentures of bargain and sale, duly enrolled, the premises were shortly afterwards conveyed to them, upon trusts, that they should let the pews and seats in the chapel, under such yearly or other payments as they might think fit, and upon other trusts, as therein more particularly appear (the deeds forming part of the case). The consideration-money for the purchase of the ground, and the sums expended in erecting the chapel, were raised partly by voluntary donations, and partly by sums borrowed by the appellants. The current expences of the trustees in supporting the chapel during the year 1810 (when the rate was made) as appear by the disbursements after-mentioned, were 247*l.* 7*s.*; and the whole of the pew-rents received for that year amounted to 222*l.* 4*s.* which were applied towards the discharge of the following expences; namely,

	£	s.	d.
To insurance, rent and taxes, and candles for one year, - - - - -	84	19	9
To tradesmen's bills for repairs, - - - - -	24	9	3
To chapel-cleaners, candle-snuffers, and chapel-door keepers, - - - - -	22	18	
To one year's quarterage for salary and board allowed to two Methodist preachers for officiating in the York chapel, - - - - -	110	0	0
To T. S., half a year's salary for conducting the singing in the chapel, - - - - -	5	0	0
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	247	7	0

The point reserved by the Sessions was, whether the appellants, under the above circumstances, were liable to contribute to the relief of the poor, in respect of the rent or monies so received for the pews, and so applied as above stated. — LORD ELLENBOROUGH C. J. The application of the money received may be very proper; but the receipt of it by the trustees for the rent of the pews is rateable. There is a further item, I observe, of 5*l.* for half a year's salary for conducting the singing in the chapel: I do not say that it is improper; but how can that be necessary? Nor indeed do I find any thing stated in the case of *necessary* expences, but only of the *current* expences. The question is, whether the trustees are rateable. In what situation do they stand to the property? In 1804 they purchased the ground, on which they afterwards erected the chapel: they are, therefore, the owners of the property. If they had gratuitously admitted persons into their chapel, and provided preachers for the congregation, without receiving any thing, they would have come within the case of *The King v. Woodward* (a); but observe the difference between the two cases: there it was found that the trustees did not receive any rent, or other pecuniary advantage, for the use of the seats in the

(a) *Ante*, pl. 200.

Quaker's meeting-house: here it is stated that the trustees do receive rent for the seats. What similitude then does this bear to *Waldo's case* (a), who gratuitously devoted his property to the education and maintenance of paupers, but derived no profit to himself? Here profit is made of the property to the full by the trustees who let out the seats, and receive pecuniary advantage from the use of them. And, admitting that there must be some expences incurred in producing the profit, it depends upon circumstances, and the mode of administering the fund, what the profit shall be. If it were absolutely necessary that all the sums stated in the account of expences should be expended; it should have been expressly found in the case, that they were all necessarily expended in the carrying on the business of the chapel. The trustees may go on increasing their expenditure in this manner, as their profits increase. I admit that it is not found, that any of the items were fraudulently swelled for the purpose of this question: but it is not enough in these cases to show the expences laid out in any particular year absorbed the profits of that year; for the benefit of such expences may be derived in future years, as is often the case in improvements of farms. If valuable land in the neighbourhood of a town be covered with buildings in one year, the expences of that year would probably greatly exceed its profits; but the land would not cease to be valuable and rateable on that account. This is not like the case where persons have been held not to be rateable for property, as not being in the occupation of it; for these appellants are the original proprietors of the land, on which they have erected a chapel by voluntary subscription, under no restriction as to the profits to be derived from it, and in the actual receipt of rents, which they have applied in the manner stated. — GROSE J. The first question is, Whether there is any thing rateable in this case? and here there is clearly rateable property; for there is land and a building, which produces profit. But it is said that it does not produce profit sufficient to warrant a rate on these defendants in respect of it. But that depends upon the manner in which they apply the proceeds. It does, in fact, produce profit; and they dispose of it as they please afterwards. How then does this differ from other buildings which produce profit? If this be not rateable on account of the subsequent application of the profits by the trustees to the benefit of others, why should any estate which a man holds in trust be rateable. Then, 2dly, the trustees who receive the profits are the occupiers of the property, and therefore they are liable to be rated for it. — LE BLANC J. The subject-matter of the rate is within the stat. 43 *Eliz. c. 2.*, which directs the occupiers of lands and houses to be rated; these appellants purchased the land, and erected a building on it to be used as a chapel, and they now let out the seats, and receive the rent for them; they are, therefore, the occupiers of the building. Then the only question is, Whether they are liable to be rated for it, on the ground that it is not valuable property? It is let out at an annual rent: but it is objected that though they receive profit in the first instance, yet they afterwards dispose of the whole in the establishment, in paying the salaries of the ministers, and in defraying other expences of attendants and repairs. I agree that this is in substance a rate on the ministers; for if they had let out the pews and received the

(a) *Ante*, pl. 182.

rents, they would only have received the surplus profit, after payment of all the necessary expences of the chapel: but the pews are let out by those who are, in effect, the trustees for the ministers; for they pay over to them so much as remains after defraying the expences. These trustees, therefore, must be considered as the occupiers, because the property is in them, and they let out the pews; and they are therefore rateable for the profits in the same manner as the ministers themselves would be, if these latter let out the pews. — BAYLEY J. The property itself is rateable, and the trustees are the proper persons to be rated for it. It is a house, and the statute of *Eliz.* says, that the occupiers of houses are rateable. It produces profit; for certain sums are paid annually into the hands of the persons rated by those who rent the pews. Then it is objected that part of the money so received, which is applied to the salaries of the preachers, is referable to them and not to the house, and if there were no preachers there would be no pew-rents received. I agree that the money so received is partly referable to the preacher, but a part is also referable to the house itself, in respect to the superior accommodation afforded by it to those who attend the preachers; for such large sums would not be paid to hear them in the open air. This then is not like *Woodward's* case (a); nor like the case of *Mr. Waldo* (b), who dedicated his property to the charitable purpose of educating and maintaining poor children: for there was no profit made of the meeting-house in the one case, or of the property dedicated to the charity-children in the other: but here a profit was made of the property. And there is no hardship in saying that the trustees shall pay the rate; for they will stop *in transitu* so much as they pay for this purpose; and the ministers are not the proper persons on whom to impose the rate on the building, in respect of their salaries. The trustees are not under any obligation to make the payment to the extent stated: they have paid the money in fact, but they were not under any obligation to do so at all events. This, therefore, being property, which in its nature is rateable, and profit being, in fact, made of it, and that profit passing, in the first instance, through the hands of the trustees, I see no doubt but that they are rateable for it. — Order and rate confirmed.

(a) *Anle*, pl. 200.

(b) *Anle*, pl. 182.

On an appeal against a rate on the ground, that A is not rated for his stock in trade, the sessions ought to amend the rate and not quash it. Stock in trade is rateable to the poor, notwithstanding it has never been rated, unless there be some circumstances to take it out of the general rule.

(a) *Anle*, pl. 206.

230. *Rex v. Ambleside, M. T. 53 G. 3. 16 East, 380.* — R. S. appealed against a poor-rate for A. The ground of appeal was, "Because one W. W. and other persons named in the rate were 'not then assessed or rated for or in respect of his and their stock in trade.'" The rate in question was made in respect of real property only, and no stock in trade or other personal property was included in the rate. W. W. had stock in trade which was visible personal property within the said township, producing profit, and no assessment was made upon him in the said rate in respect thereof; but no stock in trade or other personal property had ever been rated within the township. The Sessions quashed the rate, subject, &c. Upon this case being called on, after P. Courtenay had stated that the question intended to be submitted, was, whether if stock in trade produce a profit, the usage can vary its rateability. — LORD ELLENBOROUGH C. J. said, Is there not another question; Whether the rate ought not to have been amended, instead of being quashed? As to the rateability of stock in trade, that has been settled in *Rex v. Darlington* (a), if it be ascertained

to be profitable. It is then an objection applicable to one person, and the justices should have amended the rate, and not quashed it. The 41 G. 3. c. 23. was passed for the very purpose of enabling them so to do, in order to prevent the inconvenience of the parish being without funds for the maintenance of its poor in the mean time. We say, therefore, that this rate was not properly quashed, but ought to have been amended. If there are any circumstances to take it out of the general rule, as stated in *Rex v. Darlington*, they should be stated: if there are none such, the property is rateable. *Rex v. White* (a) is also to the same effect.—Order of Sessions quashed.

(a) *Ante*, pl. 199.

231. *Rex v. Governor and Company of the New River, E. T.* 53 G. 3. 1 M. & S. 508.—The Governor and Company of the New River appealed against a poor-rate for *L. A.* The Sessions confirmed the rate, subject, &c. In a rate for *L. A.*, the Governor and Company of the New River are rated for land in *C. M.*, 15*l.* The Governor and Company of the New River were incorporated by charter in 1619, for the purpose of conveying water from a spring rising in *C. M.*, in the liberty of *L. A.*, to the cities of London and Westminster, and do supply a great part of the same with water, by means of a cut called the New River, leading from the spring to a head or reservoir at Islington, whence it is distributed by means of engines and pipes to the different parts of the metropolis, and from which the company receive considerable profit beyond the sum at which the property in question is rated. The water of the New River is derived from two sources, part from the river *Lea*, from which there is a cut communicating with the New River, near *C. M.*, and part from a spring rising and inclosed in a basin in *C. M.*, which is the subject of the present rate, and is the freehold of the New River Company, and in their occupation. The quantity of water derived from each of these sources is nearly equal. That part of *C. M.* which is occupied by the Company, and is the subject of this rate, contains about two acres; it consists solely of the basin where the spring rises, and so much of the cut from thence called the New River as lies in the liberty of *L. A.*, where it joins the water taken from the river *Lea*, and from thence it continues to run with the said water so taken from the river *Lea* in one joint course to Islington. The said land alone without the spring, and if it were not covered with water, is of the annual value of 5*l.* The whole profits of the company arise from the sale of the water, no part of which is distributed, nor is any of the money received for it by the company, nor does any become due in the liberty of *L. A.* If the advantage which the company derive from the use of the spring may by law be included in the rate upon the land, the land and the spring of water together are of the annual value at which they are rated. The several cases of *R. v. Millar* (b), *R. v. Sculcoates* (c), *R. v. Corporation of Bath* (d), and *R. v. Page* (e), were cited.—LORD ELLENBOROUGH C. J. This is a rate imposed on land including a spring of water, as being of the aggregate value of 300*l.* The case finds, “that the land alone, without the spring, and if not covered with water, is of the annual value of 5*l.*, but if the advantage which the company derive from the use of the spring may by law be included in the rate upon the land, the land and spring together are of the annual value at which they are rated.” Much of the

Land of which the annual value is improved by a spring rising within it may be rated to the poor at such improved value, although the owners of the land who are also occupiers, do not receive any of the profits derived from the said spring, nor does any part become due in the parish where the land lies.

(b) *Ante*, pl. 174.

(c) *Ante*, pl. 101.

(d) *Ante*, pl. 104.

(e) *Ante*, pl. 97.

argument against this rate seems to me to be built upon a perversion of the terms of this finding. We are desired to read the case as if the words were, "if the *whole* advantage of the concern may "be included in the rate;" whereas nothing like that is stated; but only "if the advantage which the company derive from the "use of the spring;" and the rate is expressly stated not to be imposed upon the whole advantage which they derive. I am at a loss, therefore, to discover between this case and *Rex v. Millar* any other distinction than that which has been alluded to, viz. that the quality of the two waters is different, the one being a mineral and the other plain water. It has been assumed, indeed, that in that case all the profits were received in the parish where the land lay; but the case does not warrant any such conclusion; and we know perfectly well that the mineral water in question in that case is disposed of in great quantities at distant places. It may be said also that in this case the owners of the property are also the occupiers, but there the property was in the occupation of a tenant: to which the answer has already been given, viz. that that circumstance is no otherwise material than as it affords a more easy criterion for ascertaining the annual value. Here, then, is land, and water inclosed in a basin upon the land, which falls within the legal description of land; and although a considerable portion of the profits of such water is derived from pipes, through which it is distributed to other places, yet it is found that the water has a certain ascertained value at the fountain head; and in cases of this kind it is enough to ascertain the local value of the property without enquiring whether it yields a return on the spot. A degree of confusion has arisen from comparing this to the case of tolls upon canals; whereas they are essentially different; for tolls are an incorporeal hereditament, and have no local corporeal existence so as to be the subject of rate until they become due. Then we have been pressed with the case of *Rex v. Sculcoates*, where it was holden that the commissioners in whom a drainage was vested were not rateable; but that was so holden upon the principle that where there is not a scintilla of benefit derived from the occupation, the property is not rateable: there the commissioners were merely servants of the public, having no divisible fund in their hands, either as trustees or to their own benefit, and deriving no advantage from the drainage; and the only persons benefited by it were the owners of lands in other parishes. In *Rex v. Bath* it was assumed in the decision, that the water was the subject of rate in the parish where it was impounded in the reservoirs; the only question there being, whether the corporation were rateable in that parish to the extent of all the profits received by them, or whether the rate ought not to have been framed with reference to the contributory profits derived to the company in other parishes. Without going further into the several cases upon this subject, and feeling no disposition to overrule the case of *Rex v. Millar*, I think there is no doubt that the Sessions have come to a right decision. The property is locally valuable in the parish where it is rated; although that value is derived from extrinsic circumstances, and although the profits are actually received elsewhere. — GROSE J. No person considering this case can entertain a doubt. It is admitted that the spring and the land in which it rises are the free-

hold of the company, and in their occupation. The only question is, Whether it is a beneficial occupation? Upon that subject there cannot be a reasonable doubt; for it is stated in the case, that the land including the spring is worth about 300*l. per annum*, and that the company do derive a considerable profit from it. It would be strange, therefore, if the Court should hold that it is not rateable. I cannot distinguish this case from the common case of land on which corn grows. In such case the land is assessed according to its value, and that value is estimated according to that which it produces; so here the land produces a spring, and the value of it is to be computed according to the benefit which the spring produces to the company. I say nothing as to the quantum of the rate, that being a question wholly in the discretion of the Sessions: here we have only to decide on the rateability of the property.—LE BLANC J. The question arises on the validity of a rate made for the liberty of *L. A.* By that rate the *New River Company* are rated for land at a certain sum; which rate is imposed on them as occupiers of local corporeal property within the liberty. No rule is clearer than this, that it is not the business of this Court to enter into inquiries as to the value found by the Sessions, whether it be estimated at too high a rate or not. The Sessions may possibly have put too high a value on the property, but with that question this Court does not interfere, nor indeed is it submitted to us. The only question upon which we are required to deliver our opinion is, Whether this property be rateable; and whether the Sessions, in forming their judgment on that point, have taken into their consideration circumstances which they ought not? The subject matter of the rate is land: and the case states that the land taken independently of the spring, is of the annual value of 5*l.* only; but if the spring and the advantage derived from it by the company may be taken into consideration, then the land is not rated at more than its value. That brings it to the question, Whether in estimating the value of the land, something which is peculiar to the land, and makes it more profitable to the occupier than if it were away, can be taken into consideration? and that question has already been determined in *Rex v. Millar*, which, as it seems to me, cannot be distinguished from the present case. That was a case where land, being rendered more productive by reason of a mineral spring arising within it, was held rateable at such increased value. The only feature of distinction between the two cases is this, that here the company do not receive any of the profits of the water on the spot, whereas it is contended that in *Rex v. Millar*, it may fairly be presumed, (for it is not so stated in the case) that the profits were received at the fountain-head in the parish where rated; but does it make any difference to the occupier whether he takes the profits of his land by selling the produce on the land itself, or by disposing of it elsewhere? Suppose a man occupying land out of which he digs brick-earth, and converts it into bricks in an adjacent parish; would he not be liable to be rated as for brick land in the parish where the land lies, in the same manner as if he had sold the bricks in that parish? Particular expressions taken from cases dissimilar in their circumstances have been dwelt upon, in order to impress upon the Court the rule that there must be a beneficial occupation in the parish; to constitute which it is said, that the

profits must be received there. But the cases of tolls are by no means applicable, which are only of value at the place where they become due, and not like land which is of a certain permanent value in the place where it is situate. With respect to *Rex v. Scolcoats*, that case proceeded on the ground, that the parties rated had not the beneficial occupation of any property whatsoever, which could be the subject of rate; but here the company are found to be in the actual occupation of land which produces a profit. Whether they are liable to be rated in every parish through which the line of river passes is a question which at present it is not necessary to determine: nor is it material for us to inquire, whether the Sessions have made a higher estimate of the profits than they ought to have done. It is sufficient for our decision that it is found by the case, that there is an occupation of local and visible corporeal property within the liberty, which is rendered of greater value by reason of the spring, than it would be without. Under these circumstances, unless we were to overturn the case of *Rex v. Millar*, we must hold this property to be rateable. — BAYLEY J. I think it is clear, that the company are liable to be rated for the spring, which is part of the produce of the land. The company have the means of carrying this produce to market, where it affords a beneficial return; and it can make no difference whether they convey it along a canal or in carts and waggons, or by any other mode. It is still the produce of the land, which, when brought to market, produces a profit. The case of tolls upon canals is perfectly distinguishable, because tolls exist as local visible property in the parish where they accrue, and before they can be rated all the cases have held that they must exist as toll; but this is a rate on land situate in the parish. The fallacy of the argument lies in applying to land a rule applicable to one species of incorporeal property, and deducing from thence that the profits of land must be rated in the parish where they are received, and not where the land lies; and that this company is liable to be rated in that parish to the full extent of the profits received. But this is not a rate on the profits which the company acquire, but on the land which they occupy. The question then is, What land do the company occupy within the liberty, not what profits do they receive there; and what is its annual value? It appears that they occupy this land, the value of which is improved partly by the spring, and partly by reason of channels and pipes in other lands, through which the water is conveyed to the consumer. Perhaps, therefore, it may be fair that in fixing the quantum of rate on this property, respect should be had to the benefit which results to the company in the different parishes through which the water is conveyed. But this observation applies only to the quantum, with which we have nothing to do: here it is quite clear that the company have a beneficial occupation of land in *L.A.*, and are, therefore, liable to be rated. — Order of Sessions confirmed.

The lessees under the lord of the manor, of lot and free share of all calamine raised within the manor, are lia-

232. *Rex v. Baptist Mill Company*, T. T. 53 G. 3. 1 M. & S. 612. — The defendants were rated to a poor-rate for *R.* as occupiers of the "lot, toll, and free share of the calamine, and for "calamine yard and barn;" on appeal the Sessions amended the rate by expunging therefrom "the calamine yard and barn," and assessing the "lot, toll, and free share of the calamine," at the

sum of 8*l.* 13*s.* 2*d.* instead of 9*l.*, subject, &c. By indenture of 1810, reciting that *J. L.*, as lord of the manor of *R.*, was entitled to a lot, toll, or free share of all calamine or lapis calaminaris raised within the manor, in the proportion of one part in four, and which had been lately received by him at only three parts in twenty in the inclosed lands, but was not yet ascertained in the uninclosed lands; and also reciting, that certain persons therein named, styling themselves the *Baptist Mill Company*, had agreed to take the said lot or free share of the said *J. L.*, the said *J. L.* demised to the said persons so styling themselves the *Baptist Mill Company*, all that the said part, purpart, lot, and free share of the said *J. L.* as lord of the manor, of and in all calamine stone or lapis calaminaris, raised or gotten, or to be raised or gotten, in the inclosed lands, or wastes, or other lands within the said manor, or which he had right to claim or demand; with liberty to take and carry away the same: and also a building in *R.*, called the Calamine Barn, with the oven therein to calcine calamine, together with the yards and other buildings and premises belonging to the same: to hold to the lessees, their executors, &c. for a term of ten years, at the yearly rent of 210*l.* The said manor of *R.* is in the parish of *R.*, and the said *J. L.* is seised in fee of the said manor, and of the mines within the same. Before the making of the rate above-mentioned the lessees underlet the calamine barn and yard to *T. T.*, who, at the time of making the rate and since has occupied the barn and yard. There are no other buildings or premises, and the lessees are not, nor were at the time of making the rate, in the occupation of any land or buildings whatsoever, within the parish of *R.*, unless the Court shall be of opinion, as the Sessions were, that the lot, toll, and free share above-mentioned, are to be considered as land. All the lessees reside in *Bristol*, and their agent lives in *Shiphand*, an adjoining parish to *R.*, but attends frequently at the different calamine pits in *R.*, to collect the free share from the miners, who raise the calamine. The lessees run no risk, nor incur any expence whatever, and have since the commencement of the lease received a quantity of calamine, as the lord's lot, toll, or free share, of a considerable value. — In support of the rate *Rowls v. Gells* (a), *Rex v. St. Agnes* (b), and *Rex v. Bishop of Rochester* (c), were cited; — and against the rate it was contended, that this case fell within the rule laid down in *Rex v. Nicholson* (d), and *Williams v. Jones*. (e) — LORD ELLENBOROUGH C. J. If these lessees of lot, toll, and free share are rateable at all, it appears to me they must be rateable as for property falling under the description of land. The question is, whether the words, “all that part, purpart, lot, and free share of *J. L.*, as lord of the manor, of and in all calamine stone raised “or gotten, or to be raised or gotten,” &c. can be considered within the meaning of the statute for the relief of the poor, as land. There may, perhaps, be doubts whether these lessees, representing the lord of the manor, in whom the right subsists as the real owner, could in law have maintained trespass *quare clausum fregit*, for this calamine stone. I do not pronounce an opinion on that. This, however, appears to me to be a demise of a specific portion of the produce of land, or, in other words, land itself, free from risk or uncertainty; it is by the express terms of the finding stated to be an interest without risk. We might otherwise have been pressed with the question, Whether the

ble to be rated to the poor, as occupiers of land, in the parish where the manor lies; none of them being resident in the parish.

(a) *Ante*, pl. 169.

(b) *Ante*, pl. 192.

(c) *Ante*, pl. 227.

(d) *Ante*, pl. 102.

(e) *Ante*, pl. 103.

naming coal mines in the statute, was, according to the rule, *expressio unius exclusio alterius*, to all intents an exclusion of other mines; or was only put for example, as the naming a class in the statute of *circumspecte agatis*, 2 *Inst.* 487.: for certainly the judges who have held it to amount to the exclusion of other mines, have generally coupled it with this reason, that other mines are subject to risk. Now here the portion of calamine is divested of risk; it is the clear profit to which the lord is entitled, independent of any contingency. It is not stated, whether it is by agreement, or custom, that the person who works the mine is bound to yield to the lord a portion. It is merely stated, that the lord is entitled to one part in four. However that may be, here the whole is raised by the labour of the adventurer, and, when raised, the lord is entitled to one fourth of it. Until raised, the lord may be considered as working with the adventurers by the hands of the labourers; but, when raised, the lord's share redounds to him. That constitutes land, and may be fairly construed as such within the meaning of the statute. The case of *Rowls v. Gells*, and the other cases, do not admit of any distinction comprehending this case. This is not merely a demise of a personal chattel, of the ore after it is gotten, but of the ore which is to be gotten, and which is part of the solid mass of the land; therefore, under that description it is assessable in the hands of the occupier. — LE BLANC J. I concur in opinion with my Lord, that this property is rateable to the poor. From the time of its decision in 1776 down to the present time, I believe the case of *Rowls v. Gells* has never been determined to be other than law; on the contrary, it has been acted upon in those counties where property of this description subsists. It has been held, that persons who are not inhabitants must, in order to become rateable, be the occupiers of some species of property falling within the statute. The question has always been, whether the party could or could not be brought within the description of the statute. The statute describes this class of persons as occupiers of lands, houses, tithes, coal-mines, or saleable underwood. The construction that has been put upon the statute has been this, that whereas the legislature expressed coal-mines, they did not mean to include any other mines; and the reason given for such a distinction was, that other mines were considered as matters of hazard at that time, and therefore it was concluded that the legislature did not mean to subject the occupier of such a species of property to taxation. It remains then to be seen what construction the decisions have put on the words "occupier of land," in order to determine whether a party, who is in the receipt of a considerable revenue, which is not subject to risk, and arises out of land, may not be comprehended under the term occupier of land. In determining this, we are not tied down to follow the strict definition of land through all its consequences, and in every possible view in which it may be considered, and to decide whether this would enable the party to maintain trespass *quare clausum fregit*, or whether it corresponds in every other incident with the definition of land. In *Rowls v. Gells* it was considered, that the lord who received a stipulated benefit from the profits or value of mines, in case they did prove of value, was an occupier jointly with the adventurers, and not excusable, upon the same ground that excused the adventurers; namely, that the adventure was uncertain, or might

prove unsuccessful; but the lord was held, for the purpose of being rated, as an occupier. Here the party shares with the adventurer, without incurring any risk, and *Rowls v. Gells* determined such person to be chargeable as occupier. What reason is there for saying, that *Rowls v. Gells* was an erroneous decision? It is not necessary in construing the words of this statute, which was passed for a particular purpose, to hold that the word *lands* should satisfy every possible view under which lands may be considered. Here it is enough that the party is an occupier of land for the purpose of being rated to the relief of the poor. Where a person receives, without risk, part of the produce extracted from the bowels of the earth, he is an occupier of land; but where he merely receives a rent, or money payment, there the Court has held, as in *Rex v. Bishop of Rochester* (a), that he is not an occupier. It is said, however, that we ought to overturn *Rowls v. Gells*, and *Rex v. St. Agnes*, unless we can distinguish them from this case; but I see no reason why the Court should hold those cases to have been improperly determined, especially where they have laid down a rule of construction which has prevailed for nearly forty years, and has been the guide of the Courts below. As to distinguishing them, I cannot feel the weight of the observations which have been made with that view. In *Rowls v. Gells* and *Rex v. St. Agnes*, the rate was confined to the person in respect of the toll-dish of lead and tin raised; here the owner of the land is entitled to a certain portion of the ore when raised, which he lets, or allows persons to stand in his place as to that share; and we will not enquire whether this was a legal demise, for he authorizes them to receive and they do receive it. They stand, therefore, in the situation of the lessee in *Rowls v. Gells*, and the persons entitled in *Rex v. St. Agnes*. But subsequent cases have been cited, in which it is supposed that the authority of *Rowls v. Gells*, and *Rex v. St. Agnes*, has been disturbed, which supposition is only raised by laying hold of particular expressions of the Court to be found there. The cases of *Williams v. Jones*, and *Rex v. Nicholson*, are totally different; for those were the profits of a ferry, arising out of a right to convey passengers over a river; it was impossible in those cases to say, that the persons were occupiers of any thing but the boat and tackle in which the passengers were conveyed, in the same manner as a stage-coachman is the owner of his coach; it was therefore impossible to make the doctrine of *Rowls v. Gells* bear on those cases. Viewing all the cases on the subject, and the principle upon which *Rowls v. Gells* was decided, and likewise the public convenience, as it regards this species of property, and not seeing that the original construction on the words, occupier of land, may not comprehend a person so far an occupier as to receive a portion of the land discharged of any risk, I cannot say that this company is not rateable. — BAYLEY J. I am of the same opinion. The soil belonged to L. as lord of the manor, the persons working the mines are not tenants under him, but he has the actual occupation and possession of all the land, and the subject of the land. The workers of the mines have, as a compensation for their labour and expences, a certain part of the profits, and the owner of the soil has a share also; which is given to him, not in the character of landlord, but as a share of the

(a) *Ante*, pl. 227.

immediate pernancy of the profits of the land. I consider him as having a qualified occupation, perhaps a more direct one than the adventurers, who may be considered as servants to him, for they work the land to a certain extent for his benefit, and are to pay him his share of the original produce of the land. In *Rex v. The Bishop of Rochester*, the lessors had dispossessed themselves of all right of occupation, by leasing the mines; and it was attempted to rate them in respect of the rent reserved to them as reversioners, the sole right of occupation being in another person. So in *Rex v. Nicholson*, and *Williams v. Jones*, there was no pretence for setting up any person as an occupier of land. The cases of *Rowls v. Gells*, and *Rex v. St. Agnes*, proceeded on the idea, that the lord might be considered as occupier of lands, and rateable in that respect. Indeed it is conceded, that if the lord had not made a lease he would have been rateable; but a distinction is made that here is a demise, not of the land, or any interest in the land, but of lot, toll, and free share, and so it does not operate until the lot, toll, and free share are severed from the land; but it seems to me as if the lease demised a share in the produce of the land before the mineral is raised: it was intended that these lessees should have every benefit, which would otherwise have resulted to the lord. I cannot therefore distinguish this from the case of granting a share in the land, which is not co-extensive with the entire interest. It is not doing any violence to this lease to consider the lessees under it as occupiers of land, I lay out of consideration all the cases in which it has been holden, that adventurers are not liable. — Order of Sessions confirmed.

The lessees of all those fishings of the halves and halvendoles, with the appurtenants to the halves due and accustomed, within the river Severn between certain limits within a manor bordering on the said river, and of all royal fishes taken between the said limits, put and wheel-fishing excepted, under an annual rent, are liable to be rated to the poor for such fishery.

233. *Rex v. Ellis*, T. T. 53 G. 3. 1 M. & S. 652. — The defendant was rated to a poor-rate for *W.* under the following assessment, "*Ellis, Mr. for the fishery, 5s.*" Rate confirmed, subject, &c. In 1625 Charles I. granted the manor of *Rodley*, with (*inter alia*) "*all that our fishery of the halves and halvendoles, with the fishings called Unlawater, with the appurtenants to the halves due and accustomed, within the river Severn in the said county of Gloucester, with all royal fishes there to be taken, now in the occupation,*" &c. In 1633, the grantees of this manor demised to *Thomas Rush* for 1000 years, "*one fourth part of all those fishings of the halves and halvendoles, and of the fishing called Unlawater, with the appurtenants, to the halves due and accustomed within the river Severn in the said county of Gloucester (from certain limits to certain limits), and also a fourth part of all royal fishes to be taken in certain parts, put fishing and wheel-fishing in the said river Severn excepted out of this grant,*" under a rent of fifty-five shillings annually. The appellant and five other persons, whose shares he rents, are the owners of the said fourth part of the said fishery and premises, comprised in this demise, for the remainder of the term of 1000 years, and also of the three other fourth parts thereof derivatively from the said grantees and others, for three respective terms of 1000 years, and the appellant is the occupier of all the four parts. This fishery is in the parish of *W.*, and tithes from it have been and still continue to be paid to the vicar of *W.* The appellant, and those under whom he claims the fishery, have from the time of the demise of the respective parts thereof, exercised the sole right of fishing in the part of the river

comprised in the demise, except the put-fishing and wheel-fishing. The appellant in the exercise of his right of fishing generally uses nets, which the fishermen land on the beach or bed of the river, varying the situation as the current of the river changes by the shifting of the sand; and sometimes they affix one end of the net to a pole stuck into the bed of the river. Out of flood-mark, at one place opposite the fishery comprised in the demises aforesaid, is a fish-house built by the appellant's grandfather, about thirty-two years ago, on the waste of the lord of the manor of *Rodley*, and it has been used and occupied ever since by the appellant, and those under whom he claims such fishery, together with the said fishery, for the accommodation of the fishermen whenever the course of the river sets that way, which it has not done for the last two years. Before the above-mentioned house was built, those under whom the appellant claims, occupied in the same manner another house belonging to one *H*. The appellant, six or seven years ago, purchased a piece of pasture land adjoining the river *Severn*, in the parish of *W*. which he lets, reserving to himself the right of drying nets there, and his tenant pays the poor-rates in respect of the land. In 1799 there was a presentment in the manor court of *Rodley*, for a crib erected on the waste of the manor, and running into the river on the part adjoining one of the fisheries belonging to the appellant, and the five other persons before stated, so that part of it is overflowed at ordinary tides, and the whole at high tides. The appellant does not reside in the parish of *W*. The question for the opinion of the Court is, whether the appellant is liable to be rated to the relief of the poor in respect of the property so occupied by him in the parish of *W*. as aforesaid. — THE COURT, after an argument in which much learning and research was displayed, confirmed the rate; principally on the ground as it seemed, that they ought not to quash a rate which had been confirmed by the Sessions, unless they had very sufficient reasons for determining that the Sessions had come to a wrong conclusion; but also because it appeared to them that this grant was not to be taken as a grant of a mere right of fishery or incorporeal hereditament; the terms of the grant "*all those fishings of the halves and halvendoles, and of the fishing called Unlawater, with the appurtenants to the halves due and accustomed,*" in the absence of all evidence as to the meaning of the terms *halves* and *halvendoles*, and coupled with the constant usage of the appellants of landing nets on the shore, fixing them to the bed of the river, and so on, seeming to imply a grant of such a fishery as conveyed some kind of interest in the soil, for which interest the appellants were properly rateable.

234. *Rex v. Welbank*, T. T. 55 G. 3. 4 M. & S. 222. — Upon appeal against a poor's rate for the township of *A*. by the defendants as trustees under the will of *G. Browne*, the Sessions confirmed the rate, subject, &c. — *G. Browne* was the purchaser, and was seised in fee of two third parts of the manor of *A*., which two third parts were subject to certain leases, theretofore granted to a company of mine adventurers, of the mines, veins, pipes, floats, strings, and parcels of lead, tin, and copper ore, and other minerals and fossils, found or to be found in, within, upon, or under the moors, commons, or wastes within the manor, with full liberty to search for, dig, &c. and carry away the same, and to erect

The trustees under the will of a person seised in fee of two third parts of a manor, subject to certain leases to a company of adventurers, of the mines of lead, tin, and copper ore, and other minerals,

under the moors, commons, or wastes of the manor, at a rent certain, are not rateable to the relief of the poor for such rent; and therefore a rate by which they were rated in in one gross sum for such rent, and also in respect of their being owners and occupiers of the moors, commons, and wastes within the manor, was held ill.

machinery and other buildings upon the moors, commons, and wastes then uninclosed, for the better working the said mines, at rents amounting to 2,600*l.* *per annum*, for a part of the terms thereof granted, and 2,400*l.*, for the residue of such terms, besides a sum of 2,200*l.*, to be paid by the lessees in 1820, in manner therein mentioned, with covenants by the lessees for payment by them of all manner of taxes, rates, assessments, and impositions whatsoever, which should be assessed or imposed in respect of the said two third parts of the said mines and minerals, or in respect of the annual rents, and the said sum of 2,200*l.*; or upon the lessor, his heirs or assigns, or upon the lessees, their executors, administrators, or assigns. *G. Browne* being thus seized of the said two thirds of the manors, moors, commons, and wastes of *A.* in 1811, devised the same to the defendants, as trustees, upon certain trusts. There is a house in the parish of *A.*, called *Scarrhouse*, which belongs to the lords in fee, and which was licensed and kept by the gamekeeper as a public-house, at the time *Browne* purchased the two thirds, and so continued for about two years afterwards, during which time the gamekeeper and his family slept in the east part of it, having the whole house to go over, and the care of it, and occasionally using the dining-room and the three bed-rooms at the west end. The dining-room and two rooms up stairs were furnished by the lords, and the furniture remained their own property. In 1812, the house was discontinued as a public-house, and *Browne* furnished two of the three best bed rooms at the west end of the house, and frequently went into *A.* and lived at *Scarrhouse* for a fortnight and three weeks together, during the shooting season, and at other times. His provisions were provided by the gamekeeper, for which he paid when he went away, and he always kept his own wine at *Scarrhouse*, but he was not there the last year. The parochial and assessed taxes for *Scarrhouse* were paid by him and the owner of the other third part of the manor, according to their proportions, viz. two thirds by *Browne* and one third by the other owner. They also paid the gamekeeper his yearly wages, and let him live in the house. The mines are under the surface of the moors and the uninclosed parts of the manor. The lords have the sole right of soil and shooting upon the moors; which they do not let, but keep for the purpose of shooting over themselves; but the pasturage or herbage is enjoyed by the tenants and occupiers of lands in *A.* having right of common thereon. The lessees are not rated to the relief of the poor in respect of the said lead mines. The defendants were rated thus: The trustees under the will of *G. Browne* for 2,000*l.*, annual rent paid by the *A.* and *D.* mine company for and in respect of two thirds of the *A.* lead mines, and for other other minerals and fossils (except coals) within the parish of *A.*, and also in respect of their being owners, proprietors, and occupiers, of the moors, commons, and wastes within the manor of *A.*—Amount 2,000*l.*; assessment 150*l.*, being one shilling and sixpence in the pound. It was argued in support of the order of Sessions, that this was like the case of tolls which were rateable if annexed to something corporeal; and, secondly, that the trustees might be considered as inhabitants, being trustees under the will of a person, who clearly would have come within that description, for he occupied the *Scarrhouse*, either by him-

self or his servants. — ELLENBOROUGH C. J. As to what has been last thrown out, the actual inhabitancy of the testator does not devolve upon his executors or trustees. Then this rate appears to be ill on this single ground, that it is a conjoint rate in respect of two things, one of which is not rateable. The rent is clearly not the subject of rate, the other may or may not be. But it cannot be good as a conjoint rate. — LE BLANC J. If the facts bore out the argument, it might be well. If these trustees had been rated in a large sum in respect of their being the owners and occupiers of the moors, commons, and wastes, equal to the profits they derive from the mines, perhaps the Court might have said, we will not enter into the question of proportion, but here the rate is imposed in respect of two distinct properties, namely, the rent, and the surface of the land. — Order of Sessions quashed.

235. *Rex v. Bradford, T. T. 55 G. 3. 4 M. & S. 317.* — The Sessions, upon appeal, confirmed a rate made for the relief of the poor of the parish of S., by which W. B. was assessed as the occupier of the small canteen in Hythe barracks upon the sum of 393*l.* 15*s.* subject to the opinion of the Court, upon a case stated, which in substance was this. By indenture of the 21st of September 1813, between three of the commissioners for the affairs of barracks, of the one part, and W. B. of the other, the commissioners in consideration of the rents, covenants, &c. on the part of B. to be paid and performed, &c., demised to B., and B. did thereby take of them the building or apartments called the small canteen in Hythe barracks, in the county of Kent, to hold the said canteen as such for one year only, commencing from the 30th of September 1813, provided the said barracks should be so long held by government and used as a barrack, and to pay for the same, the rent or sum of 15*l.* for the said canteen, buildings, and appurtenances thereunto belonging, and also the further sum of 510*l.* for the privilege of using the same as a canteen, and selling therein provisions, liquors, and other articles usually sold by sutlers, making together the sum of 525*l.*, to be paid clear of all deductions by four equal payments, or a proportional part of the said rent and sum of money for so much of the year as the said barrack and canteen should be continued as such (in case the said barrack and canteen should not be so continued until the end of the term) to be calculated up to the day of such continuance, and the sum for rent and the sum due for such privilege as aforesaid to be added together, and to be recoverable in one sum, as rent, by distress or otherwise. And B. covenanted to observe the orders of the commissioners for the regulations of the barracks and canteen, &c., and that he would not allow any beer or liquors, &c. to be carried out of the canteen except to commissioned officers. And in case he should quit, or be removed from the canteen before the expiration of the year, the commissioners might calculate the proportion of rent, and also of the sum payable for the privilege of using the canteen as such due up to the day of such quitting or removal, or any preceding day, and add the same together, and might thereupon immediately distrain for the whole of such sum as rent, and proceed in like manner for such sum, and for the procuring thereof, by the sale of the goods so distrained, or otherwise, as if the same had been reserved and payable on such a day, although it might be in the middle of a quarter, and might also nevertheless

A canteen in barracks demised to B. by the barrack board for a year, at a rent of 15*l.* for the canteen and buildings, and also the farther sum of 510*l.* for the privilege of using the same as a canteen, and selling therein provisions and liquors, &c. usually sold by sutlers, with power of distress for the aggregate sum, was held to be one entire rent for the canteen; and therefore B. was held rateable to the relief of the poor as occupier of the canteen, in the respect of the 525*l.* aggregate rent, and not merely in respect of the 15*l.*

enforce the payment of the remainder of the rent, and the sum of money payable for the privilege of using the canteen as such for the said year, from *B.*, under the indenture and under the penalty therein contained; and no trade or occupation other than that of a sutler and canteen-keeper should be exercised in the canteen; for the performance of all which covenants, &c. *B.* bound himself and heirs, &c. in a penalty. Under this indenture *B.* entered into possession of the canteen, and carried on the trade of a sutler there, at the time of making the rate, and was licensed by the justices of the peace, and by the officers of the excise, to retail ale, &c. and spirituous liquors, in the canteen, in the same manner, and under the same regulations as other publicans. The annual value of the premises, without the privilege of selling provisions and liquors, is 11*l.* 5*s.*, and with it is 393*l.* 15*s.* Personal chattels and the profits of trade are not rated in the parish. The question was, whether the rate ought to be on the larger or the lesser of these two sums; if upon the larger, the rate to stand, if upon the lesser, the rate to be amended accordingly. — LORD ELLENBOROUGH C. J. I cannot look at the reservation in this indenture in any other point of view than as a mode which the parties have chosen to divide the rent. For it is in substance but one entire rent, payable for the occupation of a real tenement, and for the enjoyment of the advantages belonging to it. From its vicinity to the barracks, it, of course, would attract to it almost all the custom of that neighbourhood, and this is the incident to the property which renders it valuable. If this could be separated from the value of the tenement, and the rent distributed accordingly, we should henceforth never see a demise of any public-house in which this form of distribution would not be observed; the lessor would let the tenement at the bare rent which it was worth, and the privilege of carrying on the trade at a separate and independent rent. And this would be a receipt for reducing the annual value of the tenement to a mere shadow. But we must judge of things as they really are, and not as they may appear to be, and therefore we are to consider here whether this be not substantially one entire rent in respect of one entire subject, though artificially divided into several payments. Now it does appear to me that this is as much a profit appurtenant to the tenement, arising from its local situation, as was the profit of the weighing or carding machine to the tenements there rated. And it has not been improperly likened to the case of a soke-mill, which is let at a higher rent, because it has a right to the sole multure of all the corn and grain in the neighbourhood. Can it be doubted that this would form a part of the rateable value of the mill itself? Therefore I cannot consider this reservation *distributive* where it is, in truth, in respect of one entire taking of an entire thing with the benefits incident to it. It seems to me that this defendant is rateable, not only in respect of the 15*l.* reserved nominally as the rent, but also in respect of the further sum of 510*l.* — LE BLANC J. As I understand it, the rate is imposed upon the defendant as occupier of this canteen, for which he is rated as upon an estimate that its annual value amounts to 393*l.* 15*s.* The case states that the commissioners of the barrack-board demised to him this canteen, at a rent of 15*l.* for the canteen, and also the further sum of 510*l.* for the privilege of using it as a canteen, and selling in it provi-

sine and liquors and other articles usually sold by sutlers. And the question for our opinion is, whether he ought to be rated in respect of 11*l.* 5*s.*, the reduced proportion of the sum of 15*l.*, or in respect of 39*3*/₄ 15*s.*, the same reduced proportion of the aggregate sum of 525*l.*, which is compounded of the two sums of 15*l.* and 510*l.*, reserved by the lease. Now, in this case, I cannot but consider, notwithstanding the division of the rent into two parcels, that this canteen stands precisely on the same footing as a public-house; that is, it acquires a value from its situation, and from its being fitted up in a manner calculated to answer the purpose of a public-house. It is quite immaterial whether the rent which is paid for it is divided into separate parts, so much for the house, and so much for the privilege that it enjoys, if it be a rent for one entire canteen. And the party is not rated in respect of the profits of his trade, but only of the rent which he pays; and this, at the reduced ratio according to which the other property in the parish is rated. -- DAMPIER J. Although the rent is divided in one part of the lease, I find in another part that the whole is carefully included under the power of distress. -- Rate confirmed.

236. *Rex v. Earl of Pomfret*, E. T. 56 G. 3. 5 M. & S. 139. -- The Court in delivering judgment upon this case, stated the facts upon which the question arose, and referred to and commented upon the principal authorities which were relied on in argument. -- LORD ELLENBOROUGH C. J. This case came before the Court on a motion to quash an order of Sessions made at the hearing of an appeal, preferred by Lord Pomfret, against a poor rate for the township of *De Reeth*. The Sessions confirmed the rate, subject to the opinion of this Court as to the question, Whether the appellants were liable to be rated, upon a case, stating, that the appellants were the owners of the lead ore in certain lead mines within the township, not owners of the soil of the wastes in which the mines are situated, but merely entitled to the lead, copper, and iron, contained in the veins below the soil. That by an indenture of lease bearing date the 31st of July 1811, the appellants leased to Messrs. *Alderson*, all their mines of lead and lead ore, with certain smelting mills and other premises therein described, and with proper powers for working the mines for a term of 21 years, yielding and paying to the appellants a certain pecuniary rent therein mentioned, and also yielding, and paying, rendering and delivering to the appellants, their heirs and assigns, from time to time, during the said term thereby granted, at the place where the same should have been smelted, one full fifth part, dole, or share of all the best ore hearth lead, and one full fifth part, dole, or share of all the slag, or slag hearth lead, that should be smelted from the ore to be from time to time dug, wrought, and raised in, from, and out of the said mines and premises, or any of them, or any part thereof; the same to be delivered to the said appellants, free and clear of and from all dues, and of and from the poor rates, and all other parliamentary and parochial taxes. The lease contained a covenant on the part of lessees to deliver the fifth dole or share as often as the quantity smelted should amount to four hundred pieces, or at the end of every four weeks, at the option of the lessors. The rate was imposed upon the appellants in respect of the duty lead reserved by the above

Where a rate was imposed upon P. owner of the lead ore in certain lead mines, in respect of the duty lead reserved in a lease of said mines, being one fifth share of the lead to be smelted from the ore raised from said mines: Held, that this reservation was in the nature of a rent, and therefore not rateable.

(a) *Ante*, pl. 169.

(b) *Ante*, pl. 192.

(c) *Ante*, pl. 232.

lease. This case was argued before us with great ingenuity and learning, and all the authorities that bear upon the point were cited in the course of the argument. The counsel in support of the order of Sessions relied on the cases of *Rowls v. Gells* (a), *The King v. St. Agnes* (b), and *The King v. The Baptist Mill Company* (c); and contended that this case was not substantially different from that of *Rowls v. Gells*, which had been recognized and followed in the two other cases; and that we ought not to depart from the principle there established, upon nice and subtle distinctions. We are of opinion, however, that the present case is substantially different from all of them, and that a decision against the present rate will not break in upon the principle, or overturn the authority of any one of them. In all those cases, the rights of the parties rated, who were the owners or lessees of the mines, and of the adventurers or miners, by whom the mines were worked, depended upon the particular custom of the place; and by that custom the parties rated were entitled to and received a certain portion of the mine, or mineral, in its primitive mineral state. And the Court, with perhaps some degree of refinement, considered the parties entitled to, and receiving such portion of the mineral, as being occupiers of a portion of the mines, that is, occupiers of land within the terms of the statute of *Elix.*; and in the case of the *Baptist Mill Company*, made it part of the foundation of their judgment, that the adventurers *did not stand in the relation of tenants* to the owner of the mine, but in that of mere workmen. It is true, that in *Rowls v. Gells*, the mineral underwent some sort of process before it was delivered to the plaintiff, for the case states that the duty of lot was the *thirteenth dish* or measure of lead ore, got, *dressed, and made merchantable*, which we understand to mean made merchantable by scouring or dressing; a process thereby separating the ore from the other matters dug up with it from the mine, but not altering in any degree its original and native quality or character. The plaintiff in that case was also rated for *cope*, which is explained to be a small pecuniary payment; but no notice was taken of that circumstance in the argument or judgment; nor could it have been effectually taken; because, if the plaintiff was rateable for the *lot*, he would of course have some rateable property within the parish, and consequently his action of trespass could not be maintainable. In the case of *The King v. St. Agnes*, the party was entitled to toll and farm tin; which are stated to be certain portions of the tin gotten. In the case of the *Baptist Mill Company*, the party was entitled to a definite portion of the calamine stone found or gotten within his district. In the present case, the rights of the parties rated, who are the appellants, and those of the persons by whom the mines are worked, depend upon the terms of a written contract; a lease, by the terms whereof the appellants have demised to others the whole of their mines and veins of lead and lead ore; and therefore they cannot be said to be the occupiers of any part, unless the render or reservation of one fifth part of the lead to be smelted from the ore raised from the mines can operate as an exception of a portion of the mines, or of the ore raised from them. A reservation of a part of a thing demised cannot properly operate as a render, and it may be admitted that it operates as an exception. (d) But this is not a reservation of any part of the thing

(d) See Co.
Lit. 47 a.
142 a.

denied, it is not a reservation of any part of the ore, or of the mineral, in its natural or primitive state; but of something of a quality, name, and character entirely different; of a metal, produced from that mineral by the laborious and expensive process of smelting, in which the native mineral is mixed with another matter, viz. with coal or charcoal; and by the effect of fire upon both, a metal is obtained, which is to be considered, for this purpose at least, as entirely different from either of the two, and rather as a manufacture of art and labour, resulting from the use and application of these materials, than the original earth itself. This lease puts the parties unequivocally in the character of landlords and tenants. The reasons upon which the Court relied in *The King v. The Baptist Mill Company* do not apply to this case; but it is brought substantially within the principle of the case of *The King v. The Bishop of Rochester*. (a) For these reasons, we are of opinion that the appellants were not liable to be rated for the lead rendered to them under the lease, and, consequently, that the order of Sessions must be quashed, and the rate amended by striking out this part of it. There was another case against the same parties in respect of duty lead, payable to them under the same circumstances, in the township of *Millbecks*, upon which the same judgment must be given.

(a) *Ante*, pl. 227.

237. *Rex v. Bell*, T. T. 56 G. 3. 5 M. & S. 221.—Upon appeal by *Bell* against a rate made for the relief of the poor of the township of C., the Sessions confirmed the rate, subject, &c. The Earl of *Egremont* is lord of the manor of C., and owner of the soil of the streets of C. He or his lessees have from time immemorial collected and received certain tolls of corn sold in the market; the toll has however been collected at the commencement of the market out of every sack brought and exposed for sale. The Earl or his lessees also received payment for stallage there from persons using stalls and exposing upon them such things for sale as are usually sold on stalls, and the Earl or his lessees take the sweepings of the streets. The market is a market by prescription, and is holden in the public street and highway in the town of C., where the sacks of corn are set down for sale and the tolls are there taken. The tolls of corn are a handful out of each sack; *Bell* is the present lessee of them and pays yearly a rent of 50*l.* to the Earl, and as such lessee takes the tolls of corn in the market, but he is not an inhabitant of the township of C., nor possessed of any property within it except these tolls; the tolls yield an annual profit. *Bell* is rated in the assessment for the relief of the poor of C. as follows: "*David Bell*, corn tolls, 15*s.*" He is not lessee of the stallage, nor of the sweepings of the market, which are rented by other persons who are severally rated for them to the relief of the poor in the same rate. The question is whether *Bell* is rateable in respect of these tolls? — LORD ELLENBOROUGH C. J. I cannot say upon this statement that the appellant is an occupier of land. Would he not be equally entitled to the toll although the sacks were not set down in the market, but were upheld on the shoulders of those who exposed the corn for sale? There is nothing to give this toll a corporeal quality. — BAYLEY J. *Bell* is assessed in the rate for corn tolls, which, it is plain from the statement of the case, were mere market tolls, and not incident to the soil. In

The lessee of market tolls in gross, not incident to the soil, is not rateable to the poor in respect of his occupancy thereof.

Heddy v. Welhouse the distinction is well taken, for it is said if the king grant a fair or market with toll certain to one and his heirs to be holden in land which is borough-*English*, and the grantee die, the heir at common law shall have the market and the toll, but the younger son shall have the stallage and pickage with the soil by the custom. — HOLROYD J. These tolls would be equally payable if the soil had belonged to another. — Order quashed.

The *Hull Dock Company* were held rateable in respect of the tonnage duties, received by virtue of statute 14 G. 3. c. 56. although it appeared that the expenditure in repairs during the period for which the rate was made, exceeded the amount of the duties received.

238. *Rex v. Hull Dock Company*, M. T. 57 G. 3. 5 M. & S. 394. — A rate was made for the relief of the poor of the parish of S., in which the dock company at *Kingston-upon-Hull* were thus rated: Dock Company, Dock and wharf 2240l. — 186l. 13s. 4d. Upon appeal the rate was confirmed, subject, &c. By stat. 14 G. 3. c. 56., intituled, An act for making and establishing public quays or wharfs at *Kingston-upon-Hull*, for the better securing His Majesty's revenues of customs, and for the benefit of commerce in the port of K.; for making a basin or dock, with reservoirs, sluices, roads and other works for the accommodation of vessels using the said port, &c.: by sect. 15. the dock company were empowered and required to make a basin or dock, and also a quay or wharf, and other works therein mentioned, for the general benefit of shipping, and of the trade and commerce of the said port. By sect. 22. it was enacted, that the company should at all times well and sufficiently repair, maintain, support, and cleanse the basin or dock, and the quay or wharf, and other the works. By the 42d and 46th sections, certain rates or duties on ships lading or unloading goods within the port, and certain wharfage rates on goods which should be landed on the quay were granted to the company; besides the emoluments arising from the dock dues, the company derive considerable emoluments from the rent of warehouses which they have erected, agreeably to the directions of the act. The warehouses are situate in the town of H. and not within the parish of S.; two third parts of the dock are situate within the parishes of the *Holy Trinity* and *St. Mary in Hull*, and the remaining third is in the parish of S. In 1814 the dock company resolved to take down and rebuild the lock and entrance-basin and side-walls of the dock. They acted under the advice of their engineer, who judging the dock to be in a bad state, directed a general repair. On the 2d May 1814, the ships were removed out of the dock, and the execution of the works commenced, and continued until the 31st December last. The expenditure of the company in respect of these works, from the 20th September (being the day when the rate was made to commence) to the 31st December following amounted to 5483l. 15s. 2d., and the receipts of the company in respect of the duties and wharfage rates during the same period amounted only to 2963l. 18s. 7d. The further estimated expenditure of the company in respect of the works, from the 31st December to the 20th March (when the six months for which the rate was made would expire,) would be 1198l. 7s. 4d., and the receipts of the company in respect of the duties and wharfage rates would be 97l. only. The chief part of the expence was incurred in respect of the lock and the entrance-basin, which are situate in the town of *Hull*, but are essentially necessary to that part of the dock which is situate in S. From the time of passing the act to the making of the

rate in question, the parishioners of S. have, in assessing the dock company to the poor rate, annually made a deduction of the company's expenditure in respect of the ordinary repairs of the dock, from the gross annual amount of the company's duties and wharfage rates. The sums stated in the account of expences were all necessarily expended in making the repairs in question, and provided the dock company is entitled to deduct the same from their gross receipts, there are not any net proceeds whatever for the use of the company. The company did not, in consequence of the rebuilding of the lock and entrance-basin, become entitled to any greater or other duties or wharfage rates than they were before entitled to. The question for the opinion of the Court was, Whether the company were liable to be rated for the six months for which the rate was made? — LORD ELLENBOROUGH C. J. The act of parliament does not require the company to make a dividend at all events, nor does it say, that they shall divide to the extreme limit of the monies received. Suppose an application to be made to this Court for a mandamus to compel the company to make a dividend of the whole balance in their hands, if the company were able to show that the expence of the necessary repairs of the basin for the ensuing year would be likely to absorb the whole or the greater part of this balance, would the Court grant such a mandamus? And if the company were in any year to do so improvident an act, as to make a dividend to the uttermost penny, not reserving any thing for prospective demands: as there is a provision in the act (a) enabling them to make calls from the proprietors for the necessary purposes of the act, the consequence would be, that instead of receiving out of the funds in hand, sufficient means to cover these expences, they must call upon the proprietors to refund what they had improvidently distributed among them. The language of the act is, "That the company shall have power to make such calls of money from the proprietors of shares, to defray the expences of, or carry on the works authorized by the act, as they from time to time shall find wanting and necessary for those purposes." So that the company may call upon the proprietors of shares to refund what they have received. There is no question as to the rateability of this property; it has very properly been admitted that it is rateable. The question therefore is, Whether a rate can be imposed in respect of property which is generally rateable, but the profits of which, owing to certain incidental and necessary expences, have been for a time exhausted? As to which it is to be observed, that a rate is not always imposed on property in the particular year in which it makes a productive return, for if that were so, there could be no rate in respect of saleable underwoods and the like property, which are productive only after a series of years, except in those years in which the profits arose. But in the case of *Rex v. Mirfield* (b) it was decided, after much consideration, that saleable underwoods were rateable annually, in proportion to their value, though they should happen not to be cut down more than once in 21 years. In the present case the company have no money in hand, but they have a property which, upon an average, is productive. To hold that in every case where property is rateable, an account is to be taken, for the particular period for which the rate is imposed, of the precise amount of its productiveness, and

(a) Sect. 37.

(b) *Ante*, pl. 223.

that, if there is the smallest decrease, the rate is to be reduced *pro tanto*, would in my judgment be infinitely inconvenient. Every house must then have its separate assessment, in order to let in the particular deductions belonging to each; and this mode of assessment would be open to every species of fraud, because the largest deductions would be attempted to be thrown on periods of the greatest pressure. It appears to me that this rate is well imposed, and that the average profits of the company are not liable to be merged in the partial expenditure of any particular period. I think, therefore, this order ought to be confirmed.

— BAYLEY J. I agree that this rate is well imposed; the case does not state that this property, *communibus annis*, is not productive of profit, but only, that during this particular period it was not profitable. It appears that the company are in possession of property which is *primâ facie* rateable; the rate, therefore, is well imposed, unless the property is to be exempted on the ground of its not being profitable at the particular period for which the assessment is made; as to which *Rex v. Mirfield* is a clear authority that the principle which is to govern is, whether it be profitable *communibus annis*? — ABBOTT J. It has been admitted that the company is in possession of property which is rateable generally, and this property is of considerable annual value; I think the company cannot relieve themselves from this rate by showing, that, on occasion of some extraordinary expenditure, during the particular period for which the rate is made, that which would have gone to the account of profits has been otherwise consumed: to hold to any such rule would, in my opinion, be productive of great inconvenience; for by the same rule, I know not what answer could be given to the farmholder or householder if they were to claim a similar exemption, because of the extraordinary expence which they had incurred in the maintenance or improvement of their house or land. Therefore, as it seems to me, the order of Sessions must be confirmed; there is not any question before us as to the *quantum*. — HOLROYD J. I am of the same opinion: the only doubt which I have entertained has been on sect. 22., which obliges the company to repair the dock and other works; and if, under that section, the specific rates had been, so far as they were required, appropriated to that purpose only, I should have entertained considerable doubt whether any property vested in the trustees, which could properly be made the subject of rate, beyond the surplus which might happen to remain in their hands, after satisfying the expences attending the maintenance and repair of the works. But the case is not so; for I find, by the 42d section, the duties payable by virtue of the act are vested in the company as their own proper monies, and for their use, in consideration of the expences incurred by them in making and maintaining the works; and, by the 53d section, they are to take an account annually, and declare what dividend shall be made; so that they stand in the same situation with any other canal company. If so, there here is property which is productive of profit, although it has not made any return during the time for which the rate is made; but it is not enough to exempt property from being rated, to show that the extraordinary expences of a particular period have absorbed the profits of that period. — Order of Sessions confirmed.

239. *Rex v. Company of Proprietors of the Calder and Hebble Navigation*, H. T. 58 G. 3. 1 B. & A. 263.— Upon hearing the appeal of the company of Proprietors of the *Calder and Hebble Navigation*, against a rate made for the relief of the poor of the township of *A.*, whereby the said company stood rated as follows:—

The company of proprietors of the <i>Calder</i> and			
<i>Hebble</i> Navigation, for land occupied by the canal	£	s.	d.
and banks	5	0	0
House of lock-keeper, and garden occupied there-			
with	0	10	0

Where a statute empowered the proprietors of a canal to take rates in respect of vessels navigating the same, and expressly exempted such rates from the payment of all taxes, rates, &c. it was holden that the land occupied by the canal was also thereby exempted from poor's rate.

The Sessions confirmed the rate, subject to the opinion of this Court upon the following case: By an act passed in the ninth year of the reign of His late Majesty relating to the said navigation, the said company of proprietors were empowered to take rates and duties in respect of vessels navigating the canal, and it was thereby enacted that the said rates or duties should at all times thereafter, be exempted from the payment of any taxes, rates, assessments or impositions whatsoever, any law or statute made or to be made to the contrary thereof notwithstanding; but the act did not contain any express exemption of land taken by the company for the purpose of the navigation from the payment of rates and taxes as *land*. The quantity of land within the township of *A.*, taken by the proprietors of the navigation by virtue of the powers given them by the act for that purpose, and upon which they made a lock and a cut, or canal and banks to the same, was about six acres, and of the full value of 10*l.* per annum, if occupied in like manner as the other lands within that township. Before the land was so taken by the proprietors it was rated and assessed as other lands within the township, to the poor and other rates. The proprietors built a lock-house upon part of the lands, and the same was occupied by their lock-keeper, together with other parts of the land, as a garden to the house, and for which house and garden the company agreed to pay a proportion of the rate, resisting only the rate upon the land covered with water, and that which was used merely for a towing-path and banks, from which the proprietors derived no other emolument than the rates and duties. The Sessions, being of opinion that notwithstanding the exception the said company of proprietors were liable to be rated and assessed to the relief of the poor for the land in question, as *land*, confirmed the rate.— LORD ELLENBOROUGH C. J. The circumstance of this property not having been rated for so long a period has considerable weight in inducing me to conclude that it is not rateable. The question is upon the construction of the particular terms used by the legislature in this act of parliament. The rates and duties are thereby exempted from the payment of any taxes, rates, assessments, or impositions whatsoever. In respect of what were those rates and duties then received? They were received in respect of the land, of the manual labour, and of the stowage of the vessels in which goods were transported. By estimating the value of these component parts, you form cumulatively the value of the rates and duties. When the legislature, therefore, exempts those which are the aggregate, it must have intended to have exempted the component parts, of which the land (which is here rated) is one. In

the *Leeds* and *Liverpool* canal act, there was a special exemption. There the legislature made use of plain and unequivocal language; and if such had been found in this act they could not have been misunderstood; but there are no such words, and therefore it seems to me that the rates and duties being exempted, there is nothing left for which the company can be rateable, and that this order of Sessions must be quashed. — BAYLEY J. I own that I have felt great difficulty in the course of this argument, and even now my mind is not fully settled upon the point. The question arises upon the effect of this exemption. When the act passed, it was supposed that tolls were *eo nomine* rateable; that has indeed been since found to be inaccurate, but they were then considered to be rateable to the full extent of their value, and in the place where they were collected, which was productive of great injustice. The impression on my mind was, that the legislature meant by this exemption only to prevent the company from being rated for the tolls *eo nomine*, and in the place where they were collected, but not to exempt them generally from the poor rate, and if that had been so, then the most convenient standard for estimating the rate would be the value of the land before it had been converted into a canal, which is the standard adopted by the Sessions in this case. But inasmuch as the canal is for the public good, and not merely for the private benefit of individuals, it is possible the legislature may have intended to give this general exemption, and the construction derives considerable force from the special words of the exemption in the *Leeds* and *Liverpool* canal act. For it would not have been necessary to have introduced such words in that act, if without them the same construction would have obtained. It may be just that the property in this case should continue subject to the rate, but I incline to think, that for this purpose express words in the exemption are necessary. — ABBOTT J. I am also of opinion that the order of Sessions should be quashed. It appears that the rates and duties form the only profits arising out of the land. These the legislature has expressly exempted from the payment of the poor rates, and the only profit of the land being exempted, it would be a strong thing to say that the land itself should still continue subject to the rate. At the time of passing this act, tolls were considered *eo nomine* rateable; but I can find no instance in which the tolls having been rated, the land has also been rated in respect of any other profit. The oldest case upon this subject, is the case of *Rex v. Wickham Market* (a), there the market-place was the thing rateable, and the tolls were the measure of its value. The rate, however, in that case was imposed upon the tolls. In *Rex v. Cardington* (b), the rate was also imposed upon the tolls, although the sluice where they were received was the property rateable; then if, as appears from these cases, by the word tolls may be meant the thing in respect of which the tolls are received, the exemption of tolls by the legislature must be considered as an exemption of that in respect of which they are receivable. That in this case is the land, and I therefore think that the land is exempted from the rate. — HOLROYD J. I am of the same opinion. A rate on land is, in effect, a rate on the profits of the land, for where there are no profits, there is no beneficial occupation; now the rates and duties being exempted in this

(a) *Ante*, pl. 140.

(b) *Ante*, pl. 172.

case, and there being no other profits of the land, I think the land itself must be considered as exempted. — Order of Sessions quashed.

240. *Rex v. Company of Proprietors of the Grand Junction Canal*, H. T. 58 G. 3. 1 B. & A. 289. — The company of proprietors of the *Grand Junction Canal* appealed against a rate made on the 6th of June last, for the relief of the poor of the parish of H. The Court of Quarter Sessions confirmed the rate, subject, &c. The company are by the said rate, rated "for their canal" at the sum of 1250*l*. The canal occupies eleven acres and a half of land, extending two miles and a half in length, in the said parish. The annual value of land lying near the canal in the said parish, is 2*l*. per acre. This case depends on the construction of statute 34 G. 3. c. 24. § 19., and 36 G. 3. c. 25. § 7. The question for the opinion of the Court of King's Bench is, Whether the land used for the canal is to be assessed at the same rate as the adjacent lands; or whether the profits derived from the tolls are to be included in its rateable value? If the Court of King's Bench are of opinion that the land so used is to be assessed at the same rate as the adjacent lands, then the rate is to be amended by inserting the sum of 22*l*. 10*s*. instead of 1250*l*., otherwise the rate to stand. The following were the sections of the acts of parliament referred to in the case 34 G. 3. c. 24. § 19. "And be it further enacted, that the said company of proprietors shall from time to time be rated to all parliamentary and parochial taxes and assessments, for and in respect of the lands and grounds already purchased or taken, or to be purchased or taken, and all warehouses or other buildings to be erected by the said company of proprietors in pursuance of the said recited act and this act, in the proportion as other lands, grounds, and buildings lying near the same, are or shall be rated, and as the same lands, grounds, and buildings so purchased or taken, or to be purchased or taken, and erected, would be rateable in case the same were the property of individuals in their natural capacity." 36 G. 3. c. 25. § 7. "And be it further enacted, that all parochial rates and assessments, which shall or may at any time be laid, assessed, or imposed upon the rates and personal estate of the said company of proprietors, shall be laid, assessed, or imposed in each parish, township, hamlet, or place respectively, in proportion to the length of the said canal and cuts respectively in such respective parish, township, hamlet, or place, and not otherwise." — LORD ELLENBOROUGH C. J. It is not necessary to hear the other side. It appears to me that the two acts were made for distinct purposes. The first act directs, that the company shall be rated for land in respect of their lands in the same proportion as other lands near the same, and as the same would be rateable in case they were the property of individuals in their natural capacity; by which I understand that they are to be rated as other lands would be, supposing them not to be applied to the purposes of the canal, but to have remained in the hands of individual farmers for the ordinary purposes of agriculture, and not possessing any artificial value. Then comes the second act, which provides how the company are to be rated in the different parishes through which their canal runs. By the 7th section, all rates are to be levied in pro-

A canal act directed that the company should be rated for all lands and buildings in the same proportion as other lands and buildings lying near the same, and as the same would be rateable if they were the property of individuals in their natural capacity, and a subsequent act directed that all rates and assessments upon the personal estate of the company should be assessed in every parish in proportion to the length of the canal in such parish: Held, that the company were liable to be rated for their lands, &c. only at the same value as other adjacent land, and not according to the improved value derived from the land being used for the purposes of the canal.

portion to the length of the canal in each parish. That act, therefore, only directs and regulates the division between the parishes. Construing, therefore, the 34 G. 3. c. 24. § 19. by itself, it is perfectly intelligible, and directs the land to be rated according to its natural and not its artificial value. The 36 G. 3. c. 25. § 7. merely regulates the proportions of the rates where there are more parishes than one. In this view of the two acts they are not contradictory to each other, and the plain and obvious conclusion from them both is, that the company are not liable to the present rate. — BAYLEY J. The company in this case are only rateable under 43 *Eliz.* as occupiers of lands, tenements, and hereditaments. The first act prescribes a plain mode of rating; it imposes a rate not according to the improved value of the land created by the tolls, but according to its value when first taken for the purposes of the canal. If this were not so, there are words in this act which could not have found a place there. The lands are to be rated as other lands lying *near* the same, not in the same parish, but near; so as to give the mean-value of the adjacent lands. It has been argued, that the legislature only meant to regulate the proportion in which the canal was to be rated to the other lands adjacent; as for instance, that if those lands were charged at three fourths of their rack-rent, then the canal also was to be three fourths of its value, and so on in any other case. Now it would have been quite useless to have introduced a special provision to that effect; for in all cases that mode must be adopted. The legislature, therefore, could not have had that meaning in framing the clause. It does not, however, stop there, but directs that the land is to be rated as it would be if the property of individuals in their natural capacity. That is to be construed thus, that the land is to be rated as if it had never been appropriated to the canal, but had remained unappropriated in the hands of individuals. In that case there would have been no improved value arising from the tolls. The second act only apportions the rate between the different parishes, and does not vary the extent of the company's liability. On the whole, therefore, I am clearly of opinion, that this rate cannot be supported to the extent claimed, but that it must be amended, by reducing it to the smaller sum stated in the case. — ABBOTT J. I am also of opinion that this rate ought not to stand, but that it should be amended by inserting the sum of 22*l.* 10*s.* This case arises out of a rate imposed in terms upon the canal; for the company, as is stated in the case, are rated for their canal. This question has been argued upon the construction of the 34 G. 3. c. 25. § 19., the language of which is perhaps not free from ambiguity, and which is somewhat further obscured by the subsequent act of 36 G. 3. c. 25. § 7. I am of opinion that the true construction is that which has already been adopted by the Court, and the reasons for which have been so clearly given by my brother Bayley. I may, however, in addition to what has already fallen from the Court, be permitted to observe on some circumstances which are in favour of that construction. By the act the company have a power of taking land for reservoirs; now in that state the land is wholly unproductive. If the company, notwithstanding that, are rated for it as land, there seems good reason for the legislature to exempt them from paying to the full extent of the tolls on the

other parts of the canal; for otherwise there would be this injustice done to them, that where there was no profit there they should still be rated, and where there was considerable profit there should be no diminution of their burthen. But, secondly, this was a scheme which might be wholly unproductive. We have all seen, in passing through the country, many instances in which similar undertakings have failed, either from want of water or from a change in the circumstances of the country through which the proposed line of canal was to have passed, and the legislature, therefore, might not think it improper to insert a clause in a canal act, the effect of which would be, that if the canal were not perfected, still the parishes should not be deprived of the benefit of the land, which before that time paid rates to the poor; and that if the canal were perfected, then the company should be rated for it as land, at the rate at which the land was estimated before, when it was only subject to tillage. It is said, however, that the 36 G. 3. authorises a different construction, but it must be recollected that that act was introduced when it was supposed that tolls were liable to be rated *eo nomine*, and it might be the object of the company to be relieved from the mode of rating then adopted; they might mean to say that the rates on the tolls should be paid, if paid at all, not alone in the parish where they were collected, but rateable throughout the whole length of the canal. But I think that this act left wholly untouched the question as to the *quantum* of the rate. There is another objection to the rate as it at present stands; this is a rate on the canal, and not on the rates, duties, and personal estate of the company as provided by the act, and therefore is bad in point of form: it would, however, be still open to the different parishes to impose rates in that amended form. But I think, that if they did, still, on the other grounds stated by the Court, it would not be possible for them ultimately to succeed. Upon the whole, therefore, I am of opinion, that neither of the acts referred to, have the effect of giving validity to the present rate.—Order of Sessions amended, by reducing the rate from 125*l.* to 22*l.* 10*s.*

241. *Rex v. Birmingham Canal Company, E. T.* 59 G. 3. 2 B. & A. 570.—Upon hearing the appeal of the company of the proprietors of the *Birmingham* canal navigations, against a rate made for the relief of the poor of the parish of *Bushbury* and hamlet of *Moseley*, in the county of *Stafford*, whereby they were rated for their houses, lands, locks, towing-paths, and that part of the canal lying within the parish of *Bushbury*, and for tolls and duties arising therefrom at the sum of 36*l.* 2*s.* 6*d.*; the Sessions confirmed the rate, subject to the opinion of this Court, on the following case: By 8 G. 3. c. 38. a power was given of making and maintaining a navigable canal or cut from *Birmingham* to *Bilston*, and from thence to *Autherley* in the parish of *Bushbury*, there to communicate with the canal, making between the rivers *Severn* and *Trent*, and the proprietors were incorporated by the name of the Proprietors of the *Birmingham Canal Navigation*. That act did not contain any provisions or clause relating to parochial rates or charges. By 23 G. 3. c. 92. the proprietors of another undertaking were incorporated by the name of the Company of the Proprietors of the *Birmingham and Fazeley Canal Navigation*. And by that act it was enacted, that the said

Where a canal was made under the 8 G. 3. c. 38. which contained no clause as to the mode of charging it to the parochial rates, and another canal was made under the 23 G. 3. c. 92. and was therein directed to be rated in a special manner, and these two canals were incorporated by the 24 G. 3., by which it was provided that all the clauses,

powers, provisions, restrictions, exemptions, &c. contained in each of the two former acts, should still remain distinct from each other, and afterwards by 58 G. 3. c. 19., reciting that it was expedient to extend *one system of management to the whole canal*, it was enacted "That all the canals, &c. so made as aforesaid, under the former acts, or any of them, should be deemed part, parcel, and member of the *Birmingham Canal Navigation*, and be considered as included and governed by all the clauses, &c. in the 23 & 24 G. 3. (save and except so much thereof as related to the exemptions from stamp duties on the quantum of tolls to be collected,) as if the same had been described in the 23 G. 3. as part of the works to be made and done under, and by virtue of that act." It was held that this provision only incorporated these canals, &c. for the purpose of management, and that it did not authorize the canal origi-

company of proprietors should from time to time be rated to all parliamentary and parochial taxes, rates, and assessments, for or in respect of the lands and grounds to be purchased or taken, and all warehouses and other buildings to be erected by the said company of proprietors in pursuance of this act, in the same proportion as other lands, grounds, and buildings lying near the same are or shall be rated. By 24 G. 3. sess. 2. c. 4., these two companies were united and incorporated together into one body corporate, by the name of the Company of Proprietors of the *Birmingham* and the *Birmingham and Fazeley Canal Navigations*. And it was thereby enacted, that none of the clauses, powers, provisions, restrictions, exemptions, matters, and things contained in the 8 G. 3., were meant or intended, or should be deemed, adjudged, or taken to extend to the navigable canals or cuts, or other works authorized to be made by the 23 G. 3.; and that none of the clauses, powers, provisions, restrictions, exemptions, matters, and things contained in the said last-mentioned act, were meant or intended, or should be deemed, adjudged, or taken to extend to the navigable canal or cuts, or to any other works authorized to be made by the 8 G. 3., but that the same should be and remain separate and distinct from each other, in like manner as they would have done in case that act had not been made or the said respective companies had not been united. Subsequently to this period several other acts passed relative to these canals, by one of which their name of incorporation was changed to "The Company of Proprietors of the *Birmingham Canal Navigations*." By 58 G. 3. c. 19. intituled, "An act for altering, explaining, and amending the several acts of parliament passed relating to the *Birmingham canal navigations*, and for improving the said canal navigations;" after reciting the acts of the 8th, 9th, 23d, 24th, 25th, 46th, 51st, and 55th years of the reign of His said Majesty, and after reciting, that in pursuance of the said recited acts, or some of them, the company of proprietors of the *Birmingham canal navigations* had made several different navigable canals, cuts, and communications; all which had been ascertained to be of very great public utility; and that doubts had arisen, and then existed, whether the whole and every part of the canals and cuts intended to be comprised under the name of "The *Birmingham Canal Navigations*" had been duly incorporated therewith, and it had been found very inconvenient to have different acts of parliament, applicable for the same purposes, to different, yet intersecting and adjoining, parts of the said *Birmingham canal navigations*, and it was highly expedient to extend one system of management to the whole thereof, in such way as to render the same more simple, and to alter such parts of the former system as were by experience found improper, or had been by circumstances rendered unavailing, and particularly to empower the said Company of Proprietors of the *Birmingham Canal Navigation* to contract, by the year or otherwise, with the owners of iron and other works, situate near the same, for the tonnage of raw materials carried to or for the use of their works, along the line of the said canal, without passing a lock, which would be very desirable for the owners of such iron and other works, and of great public benefit; it was enacted, that from and after the passing of that act, all the canals, collateral cuts, and navigable communi-

cations, so made as aforesaid, by the Company of the Proprietors of the *Birmingham* Canal Navigations, under and by virtue of all or any of the said recited acts, or any of them, shall from the time of the making thereof respectively be and be deemed taken and considered to be as part, parcel, and member of the *Birmingham* canal navigations, and all and every such part and parts of the said canals, collateral cuts, and navigable communications, and the lands, buildings, tenements, and hereditaments, already purchased or taken for the purposes thereof, by virtue and in pursuance of the powers of the said recited acts, or any of them, and as have not been already declared by any of the said recited acts to be considered as part of the works made and done under and by virtue of the said recited act of the 23 G. 3., shall be considered to be included and comprehended in and governed by all and every of the clauses, matters, and things contained in the said recited acts of the 23d and 24th of the King, so far as the nature and circumstances of the case will admit, save and except so much thereof as relates to the exemptions from stamp duties, or to the *quantum* of rates or tolls to be collected, or as may be by this act, or have been by any other act relating to the said *Birmingham* canal navigations, altered or repealed, as if the same had been described in the said recited act of the 23 G. 3. as part of the works to be made and done under and by virtue of that act. The branch of the canal navigations made under the powers and authorities contained in the 8 G. 3. passes a short distance through the parish of *Bushbury*, and the junction of the *Birmingham* canal with the *Staffordshire* and *Worcestershire* canal is at *Autherley*, in the said parish of *Bushbury*, where the Company of Proprietors have a toll-house, at which part of the rates and tolls to be collected under the said several acts of parliaments, and particularly the tolls and duties on boats passing from *Birmingham* to *Autherley*, or passing from any intermediate places between *Birmingham* and *Autherley* to *Autherley* aforesaid, became due and are payable, and were actually paid to the amount of the sum of 1794*l.*, at which the said Company of Proprietors were rated to the relief of the poor in the rate appealed against, and the said Company of Proprietors have been rated to the relief of the poor of *Bushbury* and hamlet of *Moseley*, for and upon the rates and duties becoming due and payable within *Bushbury* and the hamlet of *Moseley*, in the same form and upon the same sum as the rate appealed against since the year 1804, and have paid all the rates granted to the overseers of *Bushbury* and the hamlet of *Moseley*, except the rate appealed against. — ABBOTT C. J. I am clearly of opinion that the question proposed to us by the Court of Quarter Sessions should be answered in the negative, and that the order of Sessions should be confirmed. By the case which has been sent to us it appears that the canal was originally made under the 8 G. 3. c. 38., in which act of parliament there was no express provision exempting the canal from parochial assessments, and it followed, therefore, that by law that canal was rateable according to its improved value. The inhabitants of the several parishes, therefore, through which that canal passed, had acquired a vested right to have the canal so rated, and a right so vested in them is not to be divested by loose, equivocal, or general expressions, contained in a subsequent act of parliament, introduced by and for the benefit of those very per-

nally made under the 8 G. 3. to be rated to the parochial taxes in the special manner pointed out by the 23 G. 3.

sons who were liable to the payment of the rate. Subsequent to the 8 G. 3. other acts of parliament were passed, one of which, the 28 G. 3., introduced a special provision as to the mode of rating, more beneficial to the Company than that previously established by law. By the 24 G. 3. the two corporations were united, and the names of the corporation changed, subsequently to which the act was passed in the 58 G. 3. for bringing this canal under one system of management. Now that act provides for two distinct objects. It first recites that doubts had arisen whether the whole and every part of the canals and cuts intended to be comprised under the name of "The *Birmingham Canal Navigations*" had been duly incorporated therewith; and then enacts, "That all and every the canals, collateral cuts, and navigable communications, made by the Company of Proprietors of the *Birmingham Canal Navigation*, under all or any of the acts therein recited, shall from the time of making thereof respectively be and be deemed, taken, and considered to be as part, parcel, and member of the *Birmingham Canal Navigation*." The doubt, therefore, which was recited in the preamble was thus removed by the enacting clause. The preamble proceeds to state a further object, which manifestly was the extension of the system of management to the whole canal in such way as to render the same more simple, and to alter such parts of the former system as are by experience found improper, or as are by circumstances found unavailing. Now had it stopped here, it would, in my opinion, have been perfectly clear, that the system of management there spoken of was a system of management by the Company of Proprietors themselves. But what follows puts that out of all doubt; for the preamble proceeds thus: "And particularly to empower the said company of proprietors to contract, &c." so that the particular management alluded to in the preamble is a portion of a system of management by the company of proprietors which shows what the meaning of the words in the former part of the preamble must be. This being the object stated in the preamble, the enacting clause follows, in very general words, and it states, "That all and every such part and parts of the said canals, collateral cuts, and navigable communications, and the lands, buildings, tenements, and hereditaments, purchased or taken for the purposes thereof, by virtue and in pursuance of the said recited acts, or any of them, and as have not been already declared by any of the acts therein recited to be considered as part of the works made and done under and by virtue of the 23 G. 3., shall be, and be considered to be included, comprehended in, and governed by, all and every the clauses, matters, and things contained in the 23 & 24 G. 3., so far as the nature and circumstances of the case will admit, as if the same had been described in the 23 G. 3., as part of the works to be made and done under and by virtue of that act." Now it appears to me that those general words must, in sound construction, and according to all the rules of criticism, have reference to the object which the legislature had in view, viz. the system of management by the company of proprietors, and that these canals, &c. are only so far included, comprehended in, and governed by, the recited acts as far as that system of management is concerned. There is, however, an exemption, which I have passed over in reading the clause, and which appears to me to

furnish the only legitimate argument in favour of the construction now contended for by the company. That exemption is this, "Save and except so much thereof as relates to the exemptions from stamp duties, or to the *quantum* of rates or tolls to be collected, or as may be by this act, or have been by any other act relating to the said *Birmingham* canal navigations, altered or repealed." Part of this exception, it seems to me was reasonably introduced to obviate a doubt which might exist, whether by placing the different parts of the canal under one system of management, it did not follow that the company could only charge one rate through the whole; the other objects of this objection I do not so clearly see. In every act of parliament, however, there are many words introduced by the legislature *pro majori cautela*, and to prevent doubts. However, it is quite clear that an exception, though it may restrain, can never enlarge the words of a grant; and here the words are so plain as, in my opinion, not to admit of any reasonable doubt. We should be doing great injustice to the legislature to suppose, that they intended to take away a benefit vested, without expressing such intention in clear and unequivocal language. One single word, the word "rated," would have removed all doubt; but, in the absence of that, I do not consider myself justified in giving the effect contended for in the general words used in this clause. — BAYLEY J. I am of the same opinion, and I think this a very plain case, and that falls neither within the mischief intended to be provided against, nor within the words of the enacting clause of the 58 G. 3. By the 8 G. 3., there was created, what, for the purposes of this case, it may be convenient to call the *Bilston* canal company. By the 23 G. 3., the *Fazeley* canal company was created; and these two companies remained distinct till the 24 G. 3., by which they were incorporated by the name of the *Birmingham* canal navigation, and there never was any doubt that that was a valid and complete incorporation. Now between the 24 G. 3. and 58 G. 3., many works were done, and, in my opinion, both the preamble and the enacting clause, show that it is to these works alone that the clause in the 58 G. 3. applies. The preamble recites that doubts had been entertained. Now there are no doubts as to the works done under the 8th, but there might be doubts as to those subsequent to the 24 G. 3. The preamble then goes on to state, that it is expedient to extend one system of management to the whole: now, no ingenuity can suggest that this question, as to the rating, falls within the mischief there assigned. For the rating has no relation to the system of management there stated. There the enacting clause applies only to canals, collateral cuts, and navigable communications, made by the *Birmingham* canal navigations: now no canals had been made by the *Birmingham* canal navigations till after the 24 G. 3. The clause, therefore, can only apply to works subsequent to that period, for how could it be necessary to enact that those made under the 8th or 23 G. 3. should be deemed to be part of the *Birmingham* canal navigation, inasmuch as no one could doubt that? Then the subsequent part of the clause states that the said canals, &c. (meaning, as I apprehend, those made after the 24 G. 3.) should be included in, comprehended and governed by the 23 & 24 G. 3. It seems to me, therefore, that the 58 G. 3. does not apply to the present question, which is, as to the rateability of the canal, made

under the 8 G. 3. By that act, the parish had a vested right, which could not be taken away from them without words clearly and unequivocally showing such an intention in the legislature. I think, therefore, that the order of Sessions was right. — HOLROYD J. I am also clearly of opinion that the order of Sessions ought to be affirmed. The statute 58 G. 3. recites the purposes for which it was made. Now one rule for the construction of an act of parliament where general words are used, is laid down by Lord Coke; and it is this: "Acts of parliament are to be so construed as no man that is innocent or free from injury or wrong, be, by a literal construction, punished or endamaged." (a) Here, if we were to construe the 58 G. 3. according to the letter (supposing the argument to be well founded, that the clause refers to the whole navigation, which is doubtful) we should, in that case, deprive the different parishes of their vested rights, and so punish or endamage innocent persons who were not within the contemplation of the act. And as to the exemption I fully agree with my Lord C. J. for the reasons which he has given, that it makes no difference. I think, therefore, that we ought not to adopt the literal construction of this clause in the 58 G. 3., and that the Sessions have in this case come to the right conclusion. — BEST J. If we were to decide in this case against the order of Sessions, we should be taking away a vested right without authority of law. The company of proprietors in this case, after having made considerable profits for many years, now seek an exemption from those charges which the law has hitherto imposed upon them, but it is impossible to suppose that the legislature could have intended to grant them this exemption without having distinctly stated such to have been their intention. Upon looking at the preamble, and the enacting clause of the 58 G. 3., it appears to me that they have only reference to matters of internal regulation, and are not intended to affect the rights of third persons. The exception cannot extend the words of the enacting clause, and as those do not (as it seems to me) include the present case, the exception cannot affect it. I think, therefore, that this canal still remains, as far as its rateability is concerned, under the 8 G. 3., and therefore that the order of Sessions is right, and ought to be affirmed. — Order of Sessions affirmed.

Where the owner of the soil, by indenture, granted to certain adventurers full and free liberty to dig, mine, and search for tin, tin ore, &c., and the same to take and convert to their own use, subject to a reservation therein contained, and to make such adits, shafts, &c. as they

242. *Rex v. St. Austell*, H. T. 3 G. 4. 5 B. & A. 693. — T. C., appealed against the following assessment for the relief of the poor of the parish of *St. A.* Rates on tin and copper dues, and water-courses. T. C. for *Crinnis* copper dues: —

	£	s.	d.
Annual return,	-	-	4080 0 0
Amount taken at two fifths,	-	-	1632 0 0
Assessment at 3s. in the pound,	-	-	244 16 0

The Sessions amended the rate by striking out this assessment, and stated the following case: Mr. C., at the time of making the rate, was not an inhabitant of *St. A.*, nor the occupier of any land, house, or other property therein, unless he was deemed to be such occupier in respect of the said dues: as to which the facts were, that he being seised in fee of all the lands within which a certain mine was situate, by indenture made 12th January 1811, between him and one *J. B.*, in consideration of the payment therein reserved, and of the covenants, &c. therein

contained, did give and grant unto the said *J. R.*, his partners, fellow-adventurers, &c. full and free liberty, licence, power, and authority, to dig, work, mine, and search for tin, tin ore, copper, copper ore, and all other metals and minerals whatsoever, in and throughout all that part of his lands commonly called *Crinnis*, situate, lying and being in the parish of *St. A.*, thereafter limited and described, and the same to take, carry away, convert, and dispose of to their own use, at their pleasure, subject to the reservation therein contained: and within the limits of the set thereby granted, to make such adits, shafts, &c. and to erect such sheds, &c. as they should from time to time think necessary: *habendum* for the term of 21 years: yielding and paying, laying out and delivering upon the grass, unto and for the use of the said *T. C.*, his heirs or assigns, one full eighth part or share, or dish, of all tin, tin ore, copper, copper ore, lead, lead ore, and other metals and minerals which should or might, by virtue of the said indenture, be found and gotten, raised and brought to grass within the limits of the set thereby granted, during the said term; the same having been first well and sufficiently spalled, picked, washed, stamped or cressed, or otherwise, according to the several natures thereof, made merchantable and fit to be smelted and fairly divided, and laid out upon the grass at their costs and charges. The indenture contained further covenants, that they would, during the term, pay or deliver unto the said *T. C.*, his heirs or assigns, or his tollor or agent for the time being, the full and just one eighth part, share, or dish therein reserved; or pay the same in money, at the election of the said *T. C.*, his heirs or assigns, at such best price as the same could from time to time be sold for, within two months at furthest, after such tin, copper, or other metals and minerals should be returned and sold as aforesaid; and would give six days' notice in writing to him, or his agent or tollor, of the time of every weighing or division of the tin, tin ore, &c. to be raised and gotten by virtue of these presents: and also, that they would pay all, and all manner of rates, taxes, and assessments whatsoever, which should at any time thereafter, during the term thereby granted, be taxed, charged, assessed, or imposed upon the tin, &c.; and the money which should arise from the sale thereof, or the dues thereby reserved, or upon *T. C.*, his heirs or assigns, for or in respect thereof, and indemnify him from the same; and would effectually work the premises in the most proper and effectual manner, with a sufficient number of labouring miners, unless prevented by water or other inevitable impediment. By virtue of this grant or set, the mine had been worked ever since the date thereof, by *J. R.*, and certain persons or adventurers claiming under him, at their own sole risk and expence, by their own labourers and under the entire direction and superintendance of their own agents, and without any expence, risk, or interference whatsoever, of or by, or on the part of *T. C.* Various shafts, levels, and other works necessary to search for and obtain ore had been dug and made, and counting-houses and other houses built by the adventurers at a great expence, under and by virtue of the said grant or set within the limits thereof; and the mine, and all the erections thereon, and shafts, levels, and

should think necessary: yielding and paying to him one full eighth share of all such tin, tin ore, &c.; the same having been first spalled, picked, or otherwise made merchantable, and fit to be smelted. And the indenture contained a power either for payment in ore, or the amount thereof in money, which had been acted upon; and the owner had received it in money: Held, that for this, his one eighth share, he was liable to be rated as an occupier of land, the reservation operating as an exception out of the demise, and not being of the nature of a rent.

other workings within the same, had always, since the working of the said grant or set, been, and still are, in the sole occupation and possession of the adventurers. The mine is now a declining mine; but considerable quantities of copper ores had from time to time been raised from it: the whole of which, after undergoing several processes of breaking, washing, shifting, and stamping, at an expence varying according to the quality of the ores, from 1s. to 6s. or 7s. in the pound, and, as to the poorest ores, even to 15s. in the pound upon their market price, when cleansed for the purpose of separating them from earth and other substances, and thereby rendering them fit to be calcined and smelted, but by which process, the original and native quality of the ores themselves is not altered, had from time to time, before the same were calcined or smelted, been sold or disposed of by the adventurers, sometimes by public, and sometimes by private sale, as and when they thought fit, without any control or interference by, or on the part of the said T. C. No part of the ores raised had ever been rendered to C. in kind; but in lieu thereof, one eighth part of the money, from time to time arising from the sales of the ores, had been hitherto paid to him in pursuance of the said indenture. He had been, from time to time, rated and assessed towards the relief of the poor of the parish of St. A., in respect of such one eighth part of the money so arising as aforesaid, and had paid the several assessments up to the making of the rate appealed against. — ABBOTT C. J. I am of opinion that, in this case, Mr. C. is liable to be rated for the dues in question. I am unable to distinguish this case from *Rowls v. Gells* (a), and *Rex v. The Baptist Mill Company* (b); and I think, therefore, that we ought to decide conformably to those authorities. Notwithstanding all that has been urged upon this subject, I cannot distinguish between the cases where a party takes an interest under a specific contract, as in this case, and where the adventurers work under a custom previously existing throughout a district. The case is distinguishable from the case of *Rex v. The Earl of Pomfret* (c) in two respects; first, because there was an absolute demise in that case of all the mines, under which the possession, both of that part which was worked, and that which was not worked, passed to the lessees: but here there is an express reservation of part. In the second place, the share reserved to the lord, in *Rex v. The Earl of Pomfret*, was of smelted lead; but here the reservation is of part of the native mineral. On these grounds, it seems to me that we ought to decide in favour of the rate; and I do that with the less reluctance, because it is still open to the party to institute an action against the person who may levy for the rate, and so to bring the question before a higher tribunal. — BAYLEY J. We ought to lay out of the question the circumstance of this being a failing mine. For it is a beneficial and useful property to the person on whom this rate has been made; and it was held in *Rex v. Parrott* (d), that a coal-mine, whether profitable or not, is still rateable. This falls within the principles laid down in *Rowls v. Gells* (e), *Rex v. St. Agnes* (g), and *Rex v. The Baptist Mill Company* (h), and is distinguishable from *Rex v. The Bishop of Rochester* (i), and *Rex v. The Earl of Pomfret*. (k) Here, the person rated is, in fact, an occupier of land, and derives a profit

(a) *Ante*, pl. 169.(b) *Ante*, pl. 232.(c) *Ante*, pl. 236.(d) *Ante*, pl. 202.(e) *Ante*, pl. 169.(g) *Ante*, pl. 192.(h) *Ante*, pl. 232.(i) *Ante*, pl. 227.(k) *Ante*, pl. 236.

in respect of that occupation; and that, according to the doctrine laid down in the first set of cases to which I have referred, makes him rateable; and he has not dispossessed himself of the possession of the land, as was done in the two latter cases. In *Rowls v. Gells* it was first decided, that a party was rateable for lot and cope. It is said, indeed, that the party rated there was a lessee. That distinction makes no difference: for, if the lot and cope had not been rateable in the hands of the original proprietor, it would not have been so in the hands of his lessee. The true ground of that decision was, that the party was there considered as an occupier of the land. *Rex v. St. Agnes* proceeded on the same ground; and in *Rex v. The Baptist Mill Company* (at the time of which decision this Court were peculiarly familiar with the words of the act of parliament), it was determined, that the lessees under the lord of the manor of his lot and free share of calamine were liable to be rated as occupiers of land; and the decision went on the ground, that the lord of the manor would, but for the lease, have been rateable for it also: for the Court considered him as occupying the land by the hands of the adventurers. The latter were to work the mine, and he was to receive part of the ore gotten, and the Court considered him as joint occupier with them. In *Rex v. The Bishop of Rochester*, the mine was let; and, whether it was worked or not, still the bishop was completely out of possession of it, and the adventurers worked for their own exclusive profit. There, the rent reserved was a money rent, and the relation between the parties to the contract was that of landlord and tenant; and all that the Bishop of Rochester had was the reversion of the land. That, also, was the main ground of the decision in *Rex v. The Earl of Pomfret*. But, in this case, the adventurers have not the sole and exclusive occupation of the mine; they have only the sole and exclusive privilege of working it. This is not a conveyance of any interest in the mine till it is actually worked. It is only a privilege to dig for ore, and then only on the terms of leaving a certain portion of that ore in a fit state for the landlord. It seems to me, therefore, that, according to the authorities to which I have referred, Mr. C. must, in this case, be considered as the occupier of land; and, therefore, that he is liable to the present rate. — HOLROYD J. In the view I have taken of this case, I entirely agree with the rest of the Court. The case of *Rowls v. Gells*, although it was doubted by Lord Kenyon in *Rex v. Parrott*, seems to me to have been well decided. It was confirmed by *Rex v. The Baptist Mill Company*, from which I cannot distinguish this case. The case of *Rex v. The Earl of Pomfret* is distinguishable on the grounds already stated. — BEST J. If it were true that we must either overrule *Rex v. The Baptist Mill Company*, and the cases confirming that decision, or the case of *Rex v. The Earl of Pomfret*, I should be inclined to support the former. But it is not necessary, inasmuch as there is a material distinction between them. Here, it seems to me to be clear, that Mr. C. is an occupier of the land. For the mine is not in the exclusive occupation of the adventurers; and whatever, by the indenture, is not granted out of Mr. C., remains in him. All that the adventurers take under it is a licence to enter and dig, and take away the minerals. But when

they have so done, and the minerals are brought to grass, a division of the ~~own~~ between them and the landlord takes place. This, then, is the same as if, instead of working for wages, they worked on condition of being paid by a certain share of the produce. In this case, therefore, the rate must be supported.—Order of Sessions quashed.

Firs and larches planted with oaks for the purpose of sheltering the latter, and cut from time to time, as the oaks grow larger and required more space, but when once cut, not growing again, and some of them yielding a profit by sale, are not saleable underwoods within the 43 Eliz., the primary object of planting them being to protect the oaks, and not to derive a profit from them *per se* by sale.

Semble.

That they are not underwood at all.

243. *Rex v. Ferrybridge*, H. T. 3 & 4 G. 4. 1 B. & C. 375.—Upon an appeal of *R. M.*, against a rate for the relief of the poor, the Sessions ordered the rate to be amended by striking out a portion of the rate assessed upon the appellant, amounting to 16*l.* 16*s.* 10*d.*, in respect of his woods and plantations, subject to the opinion of this Court on the following case: The appellant is the occupier of 650 acres of land in *F.* It appeared in evidence, that in the years 1785 and 1786, 340 acres of the said land were planted with oak and ash closely intermixed with *Scotch* firs and larches. At different periods, portions of the firs and larches were cut down for the purpose of thinning the plantations, and some of these thinnings were sold under the name of fir and larch poles, but the greater part were used in the erection of buildings. Considerable thinnings of the firs and larches have been made within the last four years, and produced a profit; many of them were of the height of from 30 to 40 feet, and contain from 10 to 12 cubic feet of wood, and were 30 years old. This wood is cut without reference to size, in order to allow room for the ashes and oaks to spread. The purpose of introducing firs and larches into those plantations, being to keep the same thick and sheltered, and to make a profit by cutting the firs and larches from time to time, when the oaks and ashes by reason of their growth require more space. Fifteen years ago, 18 other acres of the said land were planted in a like manner; and five years ago, 17 other acres of the said land were also planted in a like manner. The 18 acres have been thinned by cutting out a portion of the firs and larches, but no profit was derived by such thinning. The 17 acres have not yet been thinned. The roots or boles of the firs and larches which are cut, die in the ground and produce no shoots. The whole of the land so planted hath been always rated to the relief of the poor.—BAYLEY J. The statute of the 43 *Eliz.* does not throw the charge of maintaining the poor on the occupiers of every species of property, but only on the occupiers of property of certain particular descriptions there specified, and amongst others it speaks of the occupiers of saleable underwoods. The legislature does not use the word "underwoods" *per se*, but "saleable underwoods:" and they have not in this or in any former statute affixed any definite meaning to the term "underwood." If they had done so, we should feel ourselves bound to adopt that as the meaning of the word in construing the present act. It has been said that all wood comes within the description either of timber or underwood, and, therefore, that as firs and larches are not timber, they must be considered as underwood. It is not necessary to decide whether this be correct, because by the statute of *Eliz.*, saleable underwoods only are subject to be rated to the relief of the poor. It may, however, be observed, that if all wood which is not timber, be underwood, it would follow, that horse-chestnuts, limes, plane-trees, and aspens would come within that description. Yet, surely, it would be a perversion of

language to call such trees underwood. Generally speaking, that term is applied to a species of wood which grows expeditiously and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits. It is probable that this is the description of coppice and underwood to which the statute of *Eliz.* applies. But it is not necessary to decide that, inasmuch as that statute also requires that it should be saleable underwood, and the word *saleable* in *Rex v. Inhabitants of Mirfield* (a), has been held to denote such as is intended or destined for sale, in contradistinction to such as is to supply the land with estovers for fuel and other purposes of the estate. It does not, therefore, come within the description of saleable underwood, unless the prospect of deriving a profit by sale was the main object of the proprietor when the plantation was made. There are some species of wood, such as hazel, which are valuable only as underwood, and which must have been planted originally for the purpose of acquiring profit by sale. But of all plantations, fir is perhaps the least valuable, being chiefly, I believe, intended for protection rather than profit. It is found as a fact in this case, that these firs and larches were planted principally for the purpose of affording protection to the oak and ash. The latter were the most valuable. The firs, too, were cut only for the purpose of thinning the plantation. Some, indeed, were sold, but the greater part were used in the erection of buildings on the estate. Here, the trees when cut were 30 feet high, which, to be sure, does not accord with one's notions of underwood. Nor could they have been planted with a view to a profit by sale, for if so, the cuttings would have taken place with reference to their size; but here, the cuttings were made, in fact, merely for the purpose of thinning the plantations, and with reference to the main object, the encouragement of the growth of the more valuable trees. It is quite clear, therefore, that profit was not the sole or even principal object for which the firs and larches were originally planted; and if so, they are not saleable underwoods within the meaning of the 43 *Eliz.* It seems to me, that it would be most mischievous if property of this description was liable to be rated. It is an object of national policy to encourage the growth of timber. The grower of timber gives up a present profit with a view to future advantage, and it is fit that he should be encouraged to do so. If this be rateable property, then, according to *Rex v. The Inhabitants of Mirfield*, it must be rateable annually to the relief of the poor, though it should not happen to be cut more than once in 20 years. The grower, therefore, will be subject to an annual charge long before he can derive any profit. That would operate as a great discouragement to the growth of timber; and I cannot, therefore, think that the legislature meant to subject property of this description to such an annual charge. The object of the statute was, to subject to the rate all such property only as yielded a succession of profits. I am, therefore, of opinion, that whether this be underwood or not, at all events it is not saleable underwood, and therefore not rateable to the relief of the poor. — HOLROYD J. I am also of opinion that the firs and larches mentioned in this case are not saleable underwoods within the meaning of those words, as

(a) *Ante*, pl. 223.

used in the 43 *Eliz.* The word "underwood" must be there taken to be used in its popular sense, unless it be shown to have been used differently by the legislature in that or other statutes. After great research upon this subject, Mr. *Milner* has not been able to show that it has been so used by the legislature in any other sense. According to its popular meaning it signifies coppice, as distinguished from *hautbois*. I cannot agree that all wood which is not timber comes within the description of underwood. If that were so, beech, aspin, horse-chesnut, lime, and walnut trees, would be underwood in all places where they were not timber by the custom of the country. It certainly would be contrary to the popular meaning of that term, to call such trees underwood. Admitting, however, that these firs and larches were underwood, I am clearly of opinion, that they are not *saleable* underwoods within the meaning of the statute of *Eliz.* The general subject of rate in that statute is property yielding renewable profits; for even coal-mines when worked may be said, in some sense, to yield a succession of profits. Underwoods cut at stated periods do yield a succession of profits from time to time, though not annually. This is clearly not wood of that description, for when it is once cut, the root is destroyed, and there is no succession of profit. In order to ascertain whether these be *saleable* underwoods, the object for which they were planted and the mode of management ought to be taken into consideration. It is stated in the case, that the purpose of introducing the firs and larches into the plantations was to keep the oaks and ashes thick and sheltered, and to make a profit by cutting the firs and larches from time to time, when the oaks and ashes, by reason of their growth, required more space. The principal object, therefore, of planting the firs, was to afford protection to the more valuable trees, and though a profit from the cuttings was contemplated, yet the cuttings were to take place only when the other trees required more space. And although, in fact, some of the thinnings did yield a profit, the chief object, both of planting and cutting the firs and larches, was not to derive a profit from them *per se*, but to encourage the growth of the timber. The latter, when at maturity, was looked to as the principal source of profit. It appears that, upon one occasion, even though 18 acres were cut, no profit whatever was thereby produced; and that is a strong circumstance to show, that the cuttings were not made with a view to sale, but to encourage and preserve the oaks and ashes. I am, therefore, clearly of opinion, that these firs and larches are not *saleable* underwoods within the meaning of the statute of *Eliz.* — *Bxsr J.* It certainly would be very desirable, that every species of property should be rateable to the relief of the poor. The statute of *Eliz.*, however, directs the rate to be raised by taxation of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal-mines, or *saleable* underwoods. The first four species of property mentioned in the statute yield an annual profit, and coal-mines, when worked, usually produce something like an annual profit. In the reign of *Eliz.*, underwood was probably more generally used for fuel than at present; it yielded also a profit at certain intervals, though not annually. The legislature, too, have not merely used the term underwood, but have qualified it by the word *saleable*, thereby meaning that species of underwood which is generally produced for the pur-

poes of sale, which is cut down at stated periods, produces new shoots, and thereby yields at certain intervals profits coming as nearly as possible to annual profits. It appears, in this case, that the cuttings did actually yield some profit, but they are not necessarily rateable on that account. The property ought to be of that description from which the owner is likely to derive a certain profit. Now, when this plantation was made, the owner could not reasonably expect to derive any profit from the mere cuttings of the firs and larches. The great object which he had in view was profit from the more valuable trees, of which the firs and larches were to be the shelter and protection. The latter were not to be considered objects of profit till that purpose was attained. It has been argued, that as these firs would be titheable, they are, therefore, subject to be rated to the poor; but that by no means follows; for by the stat. 45 Edw. 3. c. 3., gros bois of the age of 20 years, in respect of which the clergy had claimed tithe, under the name of sylvæ cædua, is expressly exempted from tithe. Now, gros bois means timber, and by the common law, includes oak, ash, and elm, and by the custom of the country, in particular places, many other species of trees. Every species of wood, which is not timber by the common law or by custom, is titheable. By the statute of *Eliz.* no species of wood but saleable underwood is liable to be rated to the relief of the poor. It has been said that sylvæ cædua and underwood are synonymous. In *Ford v. Rackstor* (a), however, Lord *Ellenborough*, delivering the judgment of the Court, says, "Sylvæ cædua and sub bois, or underwood, are not, it should seem, from stat. 45 Edw. 3., synonymous; for sub bois is stated to be comprehended in it, not to be it itself, or to be the same thing with it. Sylvæ cædua seems to comprehend vi termini besides underwood, all such wood as is occasionally cut, either in body, branch, or root, with the statutable exception only of gros bois, properly so called, when it is of that age at which it is, by the stat. 45 Edw. 3. exempt from being tithed, i. e. of twenty years or upwards." Underwood, therefore, is one species of sylvæ cædua; and, possibly, the firs and larches may be sylvæ cædua, though not underwood. It is, however, unnecessary to decide in this case, whether these firs be underwood or not. It is sufficient to say that they are not saleable underwoods, and, therefore, that they are not rateable to the relief of the poor. — Order of Sessions confirmed.

(a) 4 M. & S. 137.

24. *Rex v. Mayor, &c. of Sudbury, H. T. 3 & 4 G. 4. 1 B. & C. 389.* — Upon an appeal by the mayor, &c. of the borough of *Sudbury*, against a poor rate, on the ground that they were rated for property which they did not occupy, the Sessions confirmed the rate, subject to the opinion of this Court, on the following case: *Richard De Clare*, about the year 1250, granted certain pasture land, called *Portman's Croft*, in the hamlet of *B.*, to "his burgesses and whole commonalty of *Sudbury*;" and *Charles the Second*, by his charter, under which the corporation now exists, confirmed the said grant to the mayor, aldermen, and burgesses. This land is inclosed, and the corporation, consisting of a mayor, six aldermen, and 24 capital burgesses, appoint and save always, within the time of living memory, appointed, a person who is called the ranger of the commons, to keep the keys of

Where a corporation, consisting of a mayor, aldermen, and twenty four capital burgesses, was seized in fee of certain pasture lands, and appointed a ranger to keep the keys of the gates, clean the ditches, preserve the fences, and impound

cattle trespassing thereon : and, at a court held annually, made such regulations concerning their pastures, and the number of cattle each burgess was to turn on, and the sum to be paid in respect thereof, which money, after deducting the expences of management of the land, was distributed among the burgesses who did not turn on : Held, that the corporation were liable to be rated to the poor, as the beneficial occupiers of these pastures.

(a) *Ante*, pl. 216.

(b) *Ante*, pl. 228.

the gates, clean the ditches, preserve the fences, impound cattle trespassing, and do other acts of a similar description. They have, during all that time, at a court called a Court of Orders and Decrees, annually made such regulations concerning their commons, as they thought proper, and given a public notice of them by the common crier ; and for the year when the rate in question was imposed, the order declared, that every burgess who had a right to turn on his cattle to feed on the commons, should put two head of cattle, and no more, on *Portman's Croft*. It then proceeded to appoint the day when the cattle should be turned on, and to fix the price for each head of cattle, which price is always paid by the freemen exercising this right (who amount to more than 100) to the treasurer of the corporation. The mayor, aldermen, and capital burgesses (being resident) enjoy the same right upon the same terms, and some of them exercised it during the year for which the rate was made. The cattle are branded by the ranger when turned on. The whole of the money thus paid to the treasurer, after deducting the expences incident to the management of the land, is distributed among the poorer burgesses, who have, but do not, on account of their poverty, exercise a right of depasturing cattle. The mayor, aldermen, and capital burgesses, were rated, in their corporate capacity, as the occupiers of *Portman's Croft*; and the questions for the opinion of this Court were, Whether there was any rateable occupation of *Portman's Croft*? and if there were, Whether the corporation, or the individuals who depastured their cattle upon it, were liable to be rated? — *BAYLEY J.* I am of opinion that the corporation were the beneficial occupiers of the land in question, and, consequently, that the order of Sessions must be confirmed. We have been pressed strongly in the course of the argument with the case of *Rex v. Watson* (a), but that case differs from the present in two important particulars. There the individuals who turned on had the exclusive enjoyment of the land, for the purpose of turning on their cattle. No payment was made by them to the corporation, but to those resident burgesses who had the right to stock and did not exercise it. Here it is clear, from the facts stated in the case, that the corporation retained the exclusive right to the possession of the land. They appointed a ranger, he was their servant, and paid out of their funds ; his duty was to keep the keys of the gates, clean the ditches, repair the fences, and impound cattle : all these acts are usually done by the occupiers of land. The commoners could not insist upon having the keys from him. If the occupation, however, was in them, they would be entitled to have the control of the gates, and they would be bound to do the several acts in respect of their occupation, which the corporation did by their servant. The corporation received the agistment-money paid in respect of the cattle turned on the land ; they therefore occupied the land as agisters of cattle. The present case appears to me to fall within the principle of the decision in *Rex v. The Trustees for the Burgesses of Tewkesbury*. (b) The only difference is, that there the common was fed by the cattle of strangers, and here, by the cattle of the members of the corporation. If, however, the exclusive occupation of the land is in the corporation, the principle upon which that case was decided is applicable to the present. There, an act of parliament had vested

the after-math of a certain meadow in trustees, in trust for the burgesses and principal householders of *Tewkesbury*, with power to let the same annually for the best rent, and also to let it in pastures for cattle, &c. to different persons, at such rates and subject to such regulations, as the trustees should appoint, or by writing under their hands and seals, to demise the same for a term of years; the rents and profits, after payment of all charges, to be divided by the trustees amongst the objects of the trust. The trustees having let out the after-math in pastures, at so much *per* head, for horses, cattle, and sheep, were held to be the occupiers of the land, and, consequently, rateable for the same. The trustees were there considered as taking in cattle to agist, and particular stress was laid by the Court upon the circumstance, that there was no letting of any definite portion of the after-math. Now, in this case, no definite portion of the land is let to any one individual. The corporation do nothing more than take in cattle to agist; they do not even know, in the first instance, how many cattle will come in. For these reasons, it seems to me that this case falls within the principle of the decision in *Rex v. The Trustees for the Burgesses of Tewkesbury*, and is distinguishable from *Rex v. Watson*. If it were necessary to overrule either case, I should adhere to the decision pronounced in the former case, which seems to me to furnish a more reasonable rule of construction than *Rex v. Watson*. — HOLROYD J. This case differs from *Rex v. Watson* in several particulars. In that case it did not appear that the corporation did any acts upon the land. The temporary ownership seems to have been given up to the three persons mentioned in the case. Here the right of soil is in the corporation; they have the management of the land by the ranger, their servant, who keeps the keys of the gates, and cleans the ditches; at the Court mentioned in the case, they annually make regulations with respect to the mode of enjoyment of the commons by the burgesses. The money paid in respect of the cattle turned on, is received by the corporation, though it be afterwards distributed among the poorer burgesses. Many of these acts done by them could only be done in respect of their being in possession of the land. That is perfectly consistent with the exercise of subordinate rights by the burgesses. In respect of any injury done to the land itself, trespass would lie by the corporation, but in respect of any injury done to the right of common, the burgesses could only maintain an action on the case. In *Rex v. Watson*, the part of the common situated in the parish of *St. Mary* seems to have been in the exclusive occupation of the three persons mentioned in the case. The objection to the rate was, that those persons were not rated for certain lands in the parish of *St. Mary*, over which they had commonable rights, which said land, in the notice of appeal, was stated to be in the respective occupation of the said three persons. The case stated that the mayor, aldermen, &c. of *Huntingdon* were the owners and proprietors of large tracts of land within the borough, used as a common of pasture, and stocked by the burgesses, part of which lands, viz. those mentioned in the notice of appeal, was in the parish of *St. Mary*. Now, that part in the parish of *St. Mary* was stated in the notice of appeal to be in the occupation of three persons named in the case. Those persons appear, therefore, to have had

the exclusive occupation of those lands at the time when the rate was made. During that time the corporation could not do any act upon the land; they could not maintain trespasses for any injury done to the land. Here the possession is in the corporation, although there be a subordinate right in others. There was no letting of any definite part of the common to the burgesses, there was no rent reserved, but merely something paid for the agisting of the cattle. For these reasons I am of opinion, that this case differs from that of *Rex v. Watson*, and that the order of Sessions must be affirmed. — BEST J. I think *Rex v. The Trustees for the Burgesses of Tewkesbury* furnishes a more just principle of construction than *Rex v. Watson*, and I should be disposed to overrule the latter case, if it were necessary to do so in the present instance. If *A* occupies for the benefit of *B*, *C*, and *D*, *A* is to be rated. Here, the corporation are the owners as well as the actual occupiers of the common, although they occupy for the benefit of individual corporators, viz. first, for the benefit of the burgesses who put in their cattle; and, secondly, for the benefit of the poorer sort, among whom the money received is afterwards to be distributed. The burgesses are nothing like tenants in common; they have no interest whatever in the soil; it is clear that the corporation retained possession by their officer; he could not otherwise impound cattle damage feasant, that being an injury done to the occupier of the land. The corporation are even to decide how many cattle each burgess is to turn on. This shows clearly, the right of occupation to be in the corporation, although the right of turning on be in different members. It seems to me that this is not distinguishable from the case of persons taking in cattle to agist. The corporation must be considered as the owners, for it is impossible to rate any other person; for before the orders of the Court are issued, the individuals who are likely to have any interest are unknown. — Order of Sessions affirmed.

By an act of parliament the Birmingham Gas-light and Coke Company had power given to them to supply the town of B. with gas, and to lay down pipes for the conveyance of gas from the manufactory to the houses of the consumers. Under this act the company purchased lands and buildings, and there placed retorts, &c. necessary for the manufacture of gas and coke, and

245. *Rex v. Birmingham Gas-light and Coke Company*, E. T. 4 G. 4. 1 B. & C. 506. — By a rate for the relief of the poor of the parish of B., the Birmingham Gas-light and Coke Company were assessed in respect of dwelling-houses, shops, buildings, land, and premises, and the trunks, pipes, and other apparatus, for the conveyance of gas belonging to the company, situate and being fixed in the ground, in the parish of B., and the profits therefrom within the parish; the annual value being stated at 800*l.* and the assessment 20*l.* Upon appeal against this rate, the Sessions confirmed the same, subject to the opinion of this Court on the following case: By a private act of the 59 G. 3., certain persons therein named, and their successors, were declared to be a body corporate, by the name of the Birmingham Gas-light and Coke Company, and powers were given them “to supply the town with gas, “to enter into contracts for the lighting of houses, &c. and with “the consent of the commissioners for lighting and paving the “town, to break up the soil and pavements of the streets, &c. for “the purpose of laying down pipes and other necessary apparatus, “for the conveyance of gas from the manufactory to the houses, “&c. of the consumers.” In pursuance of the provisions of this act, the company purchased the dwelling-houses, shops, buildings, land, and premises mentioned in the assessment, and erected and placed therein retorts, gasometers, purifiers, and other apparatus

necessary for the manufacture of gas and coke (part of which apparatus is affixed to the freehold and part is not,) and also by the consent of the aforesaid commissioners, broke up the soil and pavements in the streets, and fixed therein the trunks, pipes, and other apparatus for the conveyance of gas, mentioned in the assessment; and which communicate with the house and manufactory. The company carry on a considerable manufacture of coke and gas upon these premises, and derive a profit from the sale of each of those articles. The coke is conveyed from the premises of the company to those of the purchasers, by means of carts and waggons, and the gas by means of the trunks, pipes, and other apparatus for the conveyance of gas, mentioned in the assessment; gas and coke are both manufactured from coal, at a great expense of fuel, and the machinery and apparatus necessary for the manufacture of these articles are also very expensive, and require frequent renewal. *Stock in trade, and the profits of the manufactories in the parish of B., are not rated to the poor in this rate.* The premises, trunks, pipes, &c. mentioned in the assessment as belonging to the company, if rated to the poor as other lands within the parish, that is to say, if the profits arising from the sale of gas are not included, are worth 200*l.* per annum, but are worth 800*l.* if the profits arising from the sale of gas are included. If the Court of King's Bench should be of opinion that the profits accruing to the company from the sale of gas are not rateable, or that they can only be rated as the profits of a manufactory, the rate ought to be amended, by inserting the sum of 200*l.* therein, in lieu of the sum of 800*l.*, and the sum of 5*l.* in lieu of the sum of 20*l.*—ABBOTT C. J. The question proposed to us is not, whether the company be rateable for their buildings above ground, or their pipes under ground, but to what amount they are rateable. I am of opinion, that the amount in respect of which they are rateable, is the sum for which the buildings, trunks, and pipes would let to a person who is willing to carry on the business there. It appears from the statement in the case, that the premises, trunks, and pipes, if rated to the poor as other lands in the parish, that is, if the profits arising from the sale of gas are not included, are worth 200*l.* per annum, but if the profits are included, then they are worth 800*l.* per annum. I am of opinion that the profits are not in this case rateable. If they were, a blacksmith's forge might be rated, not at what it would let for, but at the sum which the blacksmith acquires by it. The distinction between the cases cited and the present, is, that here the profits rated are those of a manufactory which are obtained by applying the skill and industry of man to capital brought from a distance for that purpose. They are very different from the profits of canals or of mineral waters, which are natural products arising within the parish, and rendering the land in which they are situate more valuable. For these reasons I am of opinion that the rate must be amended by inserting 200*l.* as the value of the buildings and pipes, and 5*l.* as the sum to be paid.—BAYLEY J. This is really a question of *quantum*. In most of the cases cited, the question was, whether the property was rateable or not; and though the profits may have been referred to as fixing the *quantum*, the Court never went into that question. Here the question of *quantum* is presented to the Court, and a distinction is taken between the value of the land *per se*, and

fixed in the streets trunks, pipes, &c. for the conveyance of gas. The company derived a considerable profit from the manufacture and sale of coke and gas. The stock in trade, and the profits of other manufactories in the parish of B. were not rated to the poor: Held, that the company were not rateable to the amount of the profits of their trade, but for a sum equal in amount to that for which the premises would let to other persons willing to carry on the same business.

when it is used for the purposes of the trade. I am of opinion that the company ought to be assessed, not at a sum equal to the annual profits of their trade, but at that sum which the buildings, trunks, and pipes would produce to them if let at an annual rent to persons willing to carry on the trade, or that rent which the company would be forced to pay if the premises were not their own property.—**HOLROYD J.** I am of opinion that the rate ought to be amended, as it is stated that in this parish the profits of other manufactories are not rated. In the case of a canal, the land and the water are rated; and here an attempt is made to rate the pipes and the gas; but that cannot be done. The proper criterion for the rate to be imposed upon these lands and buildings is the rent at which they could be let to a person willing to carry on the business.—**BEST J.** I think that such a construction ought to be put upon the statute of *Eliz.* as to include the largest portion of productive property, because I feel that the poor rate, and various other burthens, press heavily upon the landed interest. This rate, however, cannot be supported: it is an assessment upon the profits of trade. Now that is not a correct mode of assessment. Land is usually rated not for the entire profits derived from it, but according to the rent which the tenant pays for it; and trade ought not to be rated according to its gross profits, but according to the value of the stock used in the trade. Besides, a rate even upon the net profits of any undertaking must be unjust and unequal, in a place where similar profits and stock in trade of others are not generally rated. The rate is in this case clearly on the profits of a trade and manufacture. The profits of this company are very different from the tolls of a canal. When a canal is once formed and filled with water, it produces to the proprietor, without any thing further being done, a permanent profit in the shape of tolls; but the gas company could obtain no profit by merely laying down these pipes for the conveyance of gas through the streets. The gas must afterwards be manufactured by the company at a great expense, and sent through those pipes before they will be entitled to any recompence. The gas company stand, therefore, in the same situation as any other manufacturer who produces by artificial means a saleable commodity. Now the profits of such a manufacture could not, with justice, be rated to the relief of the poor in a parish where other profits and other stock in trade are not rated. I think, therefore, that the company ought to be assessed at that annual sum for which the premises and pipes would let to a person willing to carry on the trade, and, therefore, that the rate ought to be amended by inserting the sum of 200*l.* instead of 800*l.*; and 5*l.* instead of 20*l.*—Rate amended accordingly.

The proprietors of an inland navigation were rated to the relief of the poor for a certain number of acres of land within the township occupied by their canal, and were

246. *Rex v. Proprietors of Trent and Mersey Navigation, E. T. 4 G. 4. 1 B. & C. 545.*—By a rate or assessment made in October 1818, for the relief of the poor of *F.*, the *Trent and Mersey Canal Company* were rated in the sum of 4*s.* 11½*d.*, as proprietors and occupiers of a canal and towing-paths, in respect of seven acres of land. And upon appeal against this rate, on the ground that they were not the occupiers, nor had any rateable property in the said township of *F.*, the Sessions confirmed the rate, subject to the opinion of this Court on the following case: By an act of the 6 G. 3. the company were empowered to purchase land to them, and their

successors and assigns, for the purpose of making a navigable cut or canal from the river *Trent* to the river *Mersey*, and were authorised to take for tonnage and wharfage for all goods which should be conveyed upon the canal, such rates and duties as the company should think fit, not exceeding the sum of one penny-halfpenny *per* mile for every ton of such goods, to be paid to such persons at such places near to the said cut or canal, as the canal company should appoint; and all persons were to have free liberty to navigate with boats upon the canal (under certain regulations,) upon payment of such rates and duties. A part of the canal, being in length about 1 mile and 52 yards, comprising the quantity of land for which the appellants were rated, passed through the township of F. The company had no lands, houses, warehouses, wharfs, or other property in the township, except the canal and towing-path. No tolls, rates, or duties were received in the township; nor did any tolls, rates, or duties become payable there, the company not having so appointed. But the company received annually a much larger sum than that in respect of which they were assessed for tolls *for the passage of goods over that part of their canal which lies in the township of F.* The company derive very considerable annual profits from the canal. — Order of Sessions affirmed.

assessed in respect of that land at a sum not exceeding that which they actually received for the passage of goods over that part of the canal situate within the township: Held, that this rate was good.

247. *Res v. Manchester and Salford Water Works, E. T. 4 G. 4. 1 B. & C. 630.* — The defendants were assessed (under an act of the 32 G. 3. c. 69., intituled, "An Act for the better cleansing, lighting, watching, and regulating the towns of *Manchester* and *Salford*"), in respect of their pipes, trunks, apparatus, works, and "tenements, in the township of *Manchester*, for the conveyance and supply of water in that township, and the profits arising therefrom." Upon appeal, the Sessions confirmed the rate, subject to the opinion of this Court, upon a case which it is unnecessary to state, inasmuch as the only question discussed was, whether the liberty granted to the company under an act of parliament (by which they were incorporated,) of breaking up the soil, &c. for the purpose of laying down their pipes, &c. and conveying water, constituted a tenement within the meaning of the act under which the rate was made. The clauses of that act, which bear upon the question, being adverted to in the judgment of the Court, it becomes unnecessary to state them here. — BAYLEY J. delivered the judgment of the Court. The question in this case was, whether the company of proprietors of the *Manchester* and *Salford* water-works, in respect of their trunks, pipes, and other apparatus for supplying the towns of *Manchester* and *Salford* with water, were occupiers of what, within the meaning of the stat. 32 G. 3. c. 69., is a tenement. By that act, the commissioners thereby appointed are authorised to ascertain the sum to be raised by rate or assessment on the several inhabitants of the town of *Manchester* and *Salford*, and to raise such sums from time to time, by rate or assessment, upon all the tenants and occupiers of all messuages, houses, warehouses, shops, cellars, vaults, stables, coach-houses, brewhouses, and other buildings, *gardens or garden ground*, and other tenements in the towns of *Manchester* and *Salford*. The statute does not adopt the language of the 43 Eliz., "lands and houses," but enumerates the different properties which I have specified. It does not use the word "land," which is used in

By an act for clearing, lighting, watching, and regulating the streets of a township, the commissioners were authorised to ascertain the sum to be raised by rates or assessments on the several inhabitants of the township, and to raise such sums from time to time by rate or assessment upon the tenants and occupiers of all messuages, houses, warehouses, shops, cellars, vaults, stables, coach-houses, brew-houses, and other buildings, gardens, or garden-ground, and other tenements in the township. By another clause, the occupier of any messuage, dwelling-house, or warehouse,

or other building, or of any other *tenement* of the yearly value of 30*l.* within the township, was appointed a commissioner: Held, that, under this act, the trunks and pipes, works, and other apparatus of a water-company for the supply of the town with water, did not constitute a *tenement* within the meaning of the act, and, therefore, the company were not liable to be rated in respect of such property.

the statute of *Eliz.*; but it uses the word "*tenements*," which that statute does not use. The decisions, therefore, upon the statute of *Eliz.* will not govern this case, unless the word *tenements* here is used in as comprehensive a sense as the word *lands* there. This is an act for cleansing, lighting, watching, and regulating the streets, lanes, passages, and places within the towns of *Manchester* and *Salford*; and a chief object appears by the recital to be, to provide for the peace, security, and accommodation of the inhabitants of the towns, and of persons resorting to and passing through them. The occupier of any messuage, dwelling-house, warehouse, or other building, or of any other *tenement* within either of the towns, of the yearly value of 30*l.*, is a commissioner. The word "*tenement*" occurs in this part of the act, and is altogether associated with words which denote buildings. Section 39, which gives the power of rating, directs the commissioners to ascertain every year the sums to be raised by rates on the inhabitants of *Manchester*, and by rates on the inhabitants of *Salford*, as if *inhabitants* were to be the persons rated; and in addition to such words as denote buildings, and the general word "*tenements*," introduces the words "*gardens and garden grounds, and other tenements*." By section 40. the demand of the rate is to be left at the dwelling-house or *tenement* occupied. And by section 43. it is recited, that several messuages or dwelling-houses, warehouses, or other buildings or *tenements* in these towns, are let out in lodgings or *tenements* to divers tenants, and that it would be difficult to rate the occupiers, or recover their rates, and provision is made for rating the landlord of every such messuage, &c. of the yearly value of 4*l.* 10*s.* or upwards, which shall be so let. These are some of the instances in which the word "*tenement*" is used in this act; and from these instances and the object of the act, it may be collected in what sense it uses that word. The omission to use the obvious and general word "*lands*," and yet introducing "*gardens and garden-grounds*," implies, that "*lands*" in general were not intended to be rated. The object of the act was, to give security and accommodation to the residents and to their property. The inhabited houses, therefore, and every thing connected with residence or trade, as they were to have the advantage, were to be liable to the charge. The houses, warehouses, shops, and all other buildings, were to be rated, because they all had protection. But why were gardens and garden-grounds to be included, if lands in general were not? possibly, because the produce thereof was of value, and was a probable object of depredation, and the general lighting and watching of the towns would give so much additional protection to this species of property, as might properly make it the subject of charge. Gardens, therefore, and garden-grounds, may, on this account, be distinguished from other descriptions of land, and may be subjected to this charge, whilst land in general is exempt. Pasture-ground, for instance, stone-quarries, and other kinds of real property, though included in the 43 *Eliz.*, as affording income, and supplying, therefore, the means of contribution, are omitted in this act, because such property derives no equivalent or material protection from it. Upon the ground, therefore, that this statute does not use the comprehensive word "*land*," and uses the word "*tenement*" in a very limited sense only, and not in a sense to include

the property in question, we are of opinion that this property was not liable to be rated, that it ought to be expunged from the rate, and that the order of Sessions must be quashed. — Order of Sessions quashed.

248. *Rex v. Mosley, T. T. 4 G. 4. 2 B. & C. 226.* — Upon an appeal against a rate made on the defendant, under the *M. and S. Police Act, 32 G. 3. c. 69.*, in respect of "market sites, streets, lands, and tenements, on the market place, *Shude Hill, Smithy Door*, and "at various other streets in *M.*, and the tolls, dues, rates, and profits in respect thereof," the Sessions confirmed the rate, subject to the opinion of the Court on the following case: The assessment and rate appealed against were duly made and allowed according to the requisites of the act. The markets, for which the rate was imposed, are held in the several places named, which are public streets in *M.*, and the public have a right to pass and repass over the same, subject to the right of holding the said markets by the appellant. The appellant is lord of the manor of *M.*, and owner of the markets there, and of all the waste lands within the manor. The emoluments received by him are collected by and paid to him, from the persons using the said markets and the sites thereof, for the privilege of exposing to sale there the commodities in which they deal. The baskets, sacks, tubs, and stalls, used by such persons in the said markets, are provided by themselves, and are either carried by them, or are placed upon the pavement of the said markets, but are not fastened to the ground. In support of the order of Sessions it was contended that the word *tenement*, as used in the act in question, was large enough to embrace the subject-matter of this rate. But THE COURT said, that the meaning of the word "tenement", as used in this act, had been under their consideration on a former occasion; and that they were satisfied that it was intended to be applied to those things only which were *ejusdem generis*, with those particularly enumerated, and was not intended to be used in a larger sense sometimes given to it; that the subject of the present rate, not being of the same nature as any of the descriptions of property specified in the act, was not liable to be rated; and that the order of Sessions confirming the rate must therefore be quashed. — Order of Sessions quashed. (a)

within the meaning of the act; and therefore was not liable to be rated in respect

249. *Rex v. Hull Dock Company, M. T. 5 G. 4. 3 B. & C. 516.* — Upon an appeal by the *Hull Dock Company* against a rate made for the relief of the poor of the town of *Kingston-upon-Hull*, the Sessions amended the rate by inserting the names of certain persons therein, and confirmed the rate so amended, subject to the opinion of this Court, on a case of which the following is the substance: The rate was duly made, but it was contended on behalf of the appellants, that certain persons (named in the case,) ought to have been assessed in respect of property hereinafter mentioned, and that they were improperly omitted from the rate; and also, that a deduction ought to have been made from the sum upon which the Dock Company were assessed in respect to the amount of the poor rate with which they were chargeable. The poor of

By the *Manchester and Salford Police Act, 32 G. 3. c. 69.* rates were to be made upon "the tenants or occupiers of all messuages, houses, warehouses, shops, cellars, vaults, stables, coach-houses, brew-houses, and other buildings, gardens or garden-grounds, and other tenements, situate within the towns of *M.* and *S.* respectively:" Held that the owner of certain markets kept in the streets of *M.* in which various articles were exposed to sale, by persons who paid him for that privilege, but had not any stalls fixed to the ground, was not the occupier of a tenement of the profits of such markets.

By a statute of the 9 & 10 W. 3. the poor of the town of *Kingston-upon-Hull*, are placed under the management of a corporation established by that act, and are to be maintained by money to be levied "by taxation of every inha-

(a) Vide *Rex v. Manchester Water Works*, ante, pl. 247.

or other building, or of any other *tenement* of the yearly value of 30*l.* within the township, was appointed a commissioner: Held, that, under this act, the trunks and pipes, works, and other apparatus of a water-company for the supply of the town with water, did not constitute a *tenement* within the meaning of the act, and, therefore, the company were not liable to be rated in respect of such property.

the statute of *Eliz.*; but it uses the word "*tenements*," which that statute does not use. The decisions, therefore, upon the statute of *Eliz.* will not govern this case, unless the word *tenements* here is used in as comprehensive a sense as the word *lands* there. This is an act for cleansing, lighting, watching, and regulating the streets, lanes, passages, and places within the towns of *Manchester* and *Salford*; and a chief object appears by the recital to be, to provide for the peace, security, and accommodation of the inhabitants of the towns, and of persons resorting to and passing through them. The occupier of any messuage, dwelling-house, warehouse, or other building, or of any other *tenement* within either of the towns, of the yearly value of 30*l.*, is a commissioner. The word "*tenement*" occurs in this part of the act, and is altogether associated with words which denote buildings. Section 39, which gives the power of rating, directs the commissioners to ascertain every year the sums to be raised by rates on the inhabitants of *Manchester*, and by rates on the inhabitants of *Salford*, as if *inhabitants* were to be the persons rated; and in addition to such words as denote buildings, and the general word "*tenements*," introduces the words "*gardens and garden-grounds, and other tenements*." By section 40. the demand of the rate is to be left at the dwelling-house or *tenement* occupied. And by section 43. it is recited, that several messuages or dwelling-houses, warehouses, or other buildings or *tenements* in these towns, are let out in lodgings or *tenements* to divers tenants, and that it would be difficult to rate the occupiers, or recover their rates, and provision is made for rating the landlord of every such messuage, &c. of the yearly value of 4*l.* 10*s.* or upwards, which shall be so let. These are some of the instances in which the word "*tenement*" is used in this act; and from these instances and the object of the act, it may be collected in what sense it uses that word. The omission to use the obvious and general word "*lands*," and yet introducing "*gardens and garden-grounds*," implies, that "*lands*" in general were not intended to be rated. The object of the act was, to give security and accommodation to the residents and to their property. The inhabited houses, therefore, and every thing connected with residence or trade, as they were to have the advantage, were to be liable to the charge. The houses, warehouses, shops, and all other buildings, were to be rated, because they all had protection. But why were gardens and garden-grounds to be included, if lands in general were not? possibly, because the produce thereof was of value, and was a probable object of depredation, and the general lighting and watching of the towns would give so much additional protection to this species of property, as might properly make it the subject of charge. Gardens, therefore, and garden-grounds, may, on this account, be distinguished from other descriptions of land, and may be subjected to this charge, whilst land in general is exempt. Pasture-ground, for instance, stone-quarries, and other kinds of real property, though included in the 43 *Eliz.*, as affording income, and supplying, therefore, the means of contribution, are omitted in this act, because such property derives no equivalent or material protection from it. Upon the ground, therefore, that this statute does not use the comprehensive word "*land*," and uses the word "*tenement*" in a very limited sense only, and not in a sense to include

the property in question, we are of opinion that this property was not liable to be rated, that it ought to be expunged from the rate, and that the order of Sessions must be quashed. — Order of Sessions quashed.

248. *Rex v. Mosley*, T. T. 4 G. 4. 2 B. & C. 226. — Upon an appeal against a rate made on the defendant, under the M. and S. Police Act, 32 G. 3. c. 69., in respect of "market sites, streets, lands, and tenements, on the market place, *Shude Hill, Smithy Door*, and "at various other streets in M., and the tolls, dues, rates, and profits in respect thereof," the Sessions confirmed the rate, subject to the opinion of the Court on the following case: The assessment and rate appealed against were duly made and allowed according to the requisites of the act. The markets, for which the rate was imposed, are held in the several places named, which are public streets in M., and the public have a right to pass and repass over the same, subject to the right of holding the said markets by the appellant. The appellant is lord of the manor of M., and owner of the markets there, and of all the waste lands within the manor. The emoluments received by him are collected by and paid to him, from the persons using the said markets and the sites thereof, for the privilege of exposing to sale there the commodities in which they deal. The baskets, sacks, tubs, and stalls, used by such persons in the said markets, are provided by themselves, and are either carried by them, or are placed upon the pavement of the said markets, but are not fastened to the ground. In support of the order of Sessions it was contended that the word *tenement*, as used in the act in question, was large enough to embrace the subject-matter of this rate. But THE COURT said, that the meaning of the word "tenement", as used in this act, had been under their consideration on a former occasion; and that they were satisfied that it was intended to be applied to those things only which were *ejusdem generis*, with those particularly enumerated, and was not intended to be used in a larger sense sometimes given to it; that the subject of the present rate, not being of the same nature as any of the descriptions of property specified in the act, was not liable to be rated; and that the order of Sessions confirming the rate must therefore be quashed. — Order of Sessions quashed. (a)

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By the *Manchester and Salford Police Act*, 32 G. 3. c. 69. rates were to be made upon "the tenants or occupiers of all messuages, houses, warehouses, shops, cellars, vaults, stables, coach-houses, brew-houses, and other buildings, gardens or garden-grounds, and other tenements, situate within the towns of M. and S. respectively." Held that the owner of certain markets kept in the streets of M. in which various articles were exposed to sale, by persons who paid him for that privilege, but had not any stalls fixed to the ground, was not the occupier of a tenement of the profits of such markets.

By a statute of the 9 & 10 W. 3. the poor of the town of *Kingston-upon-Hull*, are placed under the management of a corporation established by that act, and are to be maintained by money to be levied "by taxation of every inha-

249. *Rex v. Hull Dock Company*, M. T. 5 G. 4. 3 B. & C. 516. — Upon an appeal by the *Hull Dock Company* against a rate made for the relief of the poor of the town of *Kingston-upon-Hull*, the Sessions amended the rate by inserting the names of certain persons therein, and confirmed the rate so amended, subject to the opinion of this Court, on a case of which the following is the substance: The rate was duly made, but it was contended on behalf of the appellants, that certain persons (named in the case,) ought to have been assessed in respect of property hereinafter mentioned, and that they were improperly omitted from the rate; and also, that a deduction ought to have been made from the sum upon which the Dock Company were assessed in respect to the amount of the poor rate with which they were chargeable. The poor of

(a) Vide *Rex v. Manchester Water Works*, ante, pl. 247.

bitant, and of all lands, houses, tithes impropriate, appropriation of tithes, and all stocks and estates in the said town in equal proportions according to their respective worths and values." Upon an appeal against a rate made by virtue of this act, it appeared that it omitted, first, persons not resident in *Hull* but having stock in trade there, which had produced a specified profit in the last year; secondly, a tenant of houses which he underlet at a specified profit, the under-tenants being rated, but excused from paying on account of poverty; thirdly, owners, and part owners of ships registered at *Hull*, and trading to and from that port and within the port at the time the rate was made. Some of these persons were resident in *Hull*, others were not. Some profits had been derived from the ships in the preceding year, but the appellants could not show the amount: Held, that the act in question made all personal

the parishes of the *Holy Trinity* and *St. Mary*, which two parishes comprise the whole of the town of *Hull* and the precinct of *Myton* adjoining and belonging to the town, are under the management of a corporation which was created by an act of parliament passed in the 9 & 10 *W. 3.*, and is called by the name of the "Governor, Deputy-Governor, Assistants, and Guardians of the Poor in the Town of *Kingston-upon-Hull*;" and by that statute, after authorizing the said corporation to erect workhouses, it enacted, "That it shall and may be lawful for the said corporation from time to time to set down and ascertain what weekly, monthly, or other sums, shall be needful for the maintenance of the poor in the said hospital or hospitals, workhouse or workhouses, house or houses of correction, or within the care of the said corporation, so that the same do not exceed what hath been paid in the said town towards the maintenance of the poor thereof, in any one of the three last years, and so as such poor of the said respective parishes in the said town as are unable to work or get their living, be provided for thereout; to the intent that no other levy or assessment may be made for any other maintenance or allowance to any of the poor of the said respective parishes, or any of them, upon the said inhabitants; and shall and may under their common seal certify the same to the mayor, recorder, and aldermen of the said town for the time being. Which said mayor, and any six of the aldermen, or any eight of the aldermen without the mayor, may and are hereby required from time to time to cause the same to be raised and levied by taxation of every inhabitant, and of all lands, houses, tithes impropriate, appropriation of tithes, and all stocks and estates in the said town and lordship of *Myton* adjoining and belonging to the said town, in equal proportions, according to their respective worths and values, and in order thereunto the said mayor and any six of the said aldermen, or any eight of the said aldermen without the mayor, shall have power and are hereby required indifferently to proportion out the said sum and sums upon each parish and precinct within the said town, and by their warrants under the hands and seals of the major part of them, to authorize and require the churchwardens and overseers of the poor of each respective parish and precinct to assess the same respectively, and after such assessments made and returned, the said mayor and six aldermen, or any eight of the aldermen without the mayor, are hereby empowered to approve, confirm, or alter such assessments as to them shall seem just and reasonable; and the said assessments by warrants under their hands and seals, to authorize the said churchwardens and overseers to demand, gather, and receive." Pursuant to this statute, the mayor and aldermen in *July* 1823, issued their warrants to the proper officers of the several wards into which the town of *Hull* is divided, and of the precincts of *Myton*, authorizing and directing them to make assessments within their respective wards and precincts upon every inhabitant, and upon all lands, houses, tithes impropriate, appropriation of tithes, and all stocks and estates within the same, against which assessment the Dock Company appealed on the ground of the omission of the persons hereinafter mentioned. The case then mentioned several persons not resident in *Hull*, but having either shops or counting-houses there, and stock in trade, of which a clear profit, the amount of which was specified, had been made

in the year then last past. One case was stated of a lessee of houses, which he under-let at a profit which was specified, and one of the owners of houses which he let at rents specified; the occupiers of these houses were rated, but excused from payment on the ground of poverty. A long list followed of persons owners or part owners of ships, but the shares of each person were not specified which were registered at *Hull*, and usually traded to and from that port, and were within the town of *Hull* at the time when the rate was made. One part owner at least of each ship were resident within the town, others were not, but had counting-houses there, others were neither resident nor occupied counting-houses in the town. The said several ships respectively made several voyages to and from *Hull* in the course of the then last year, and the owners made a profit thereof respectively, but the particular amounts of such profits did not appear. None of the persons above mentioned were rated in respect of the several descriptions of property enumerated. In addition to the several persons whose cases are above specified, notice of appeal had been given to divers other persons having stock in trade within the ward aforesaid, and who were not assessed or rated to the relief of the poor; and it being proved that they derived a profit from their stock, and were resident in *Hull* in the ward aforesaid, and the respondents admitting at the hearing of the appeal that such last mentioned persons ought to be added to the rate, the Court of Quarter Sessions accordingly ordered the said rate to be amended, by inserting the names of those persons in the rate, reserving for the opinion of this Court the question, Whether the said persons whose cases are above particularly specified, ought to have been assessed in respect of the property also above particularly specified? The appellants in this case are assessed in respect of the profits arising from dock dues and wharfage rates received by them. Their net profits for the year amount to 8900*l.*, after making a fair allowance in respect of repairs and all other expences incidental to, and necessary for, making the property profitable, but without making any deduction in respect of the sum with which they are chargeable to the poor-rate, and which, according to the present assessment, amounts to 2225*l.* If the amount with which they are so chargeable as poor's rates ought to be deducted, then their net profits would only amount to 6675*l.* or thereabouts. The Dock Company are assessed as upon profits amounting to 8900*l.*, and not as upon profits amounting to 6675*l.* only, no deduction being allowed in respect of the poor's rate. — ABBOTT C. J. We are all of opinion, that the local act is to be construed by itself. It is probable that the legislature would take into its consideration all the circumstances of the case, and adapt its language to those circumstances. There is not, therefore, any ground for surprise, if we should find property made rateable in *Hull* which is not so elsewhere. As to the case generally, *Cur. adv. vult.* The judgment of the Court was now delivered by ABBOTT C. J. This was an appeal against a rate by the *Hull* Dock Company. The grounds of appeal were, that some persons were improperly omitted, and that a deduction ought to have been made from the sum at which the company were rated, to the extent of the poor-rate they were compellable to pay. The poor-rate in *Hull* is raised under an act of parliament of the 9 & 10 W. 3., which directs

property rateable whether the owner were or were not resident in *Hull*, and that, consequently, the first and third classes of persons ought to have been included in the rate, and that it was not incumbent on the appellants to show the amount of profits made by the ships, for that it being established they were profitable they ought not to have been altogether omitted; secondly, that the tenant of houses underlet as before mentioned, was not liable to be rated. The *Hull* Dock Company were rated at the full amount of their profits without first making any deduction for the poor-rate: Held that this was wrong, that the "worth and value" could only be the profits, minus the outgoings, and that therefore supposing other property to be rated at a rack-rent, the poor-rate should have been calculated upon such a sum as would, together with the rate, make up the whole amount of profits.

"that it shall be levied by taxation of every inhabitant, and of
 "all lands, houses, tithes impropriate, appropriation of tithes, and
 "all stocks and estates according to their respective worths and
 "values;" and the cases of persons improperly omitted were
 reduced to certain classes, viz. first, persons residing out of *Hull*,
 but occupying counting-houses or shops within the town of *Hull*,
 and having stock in trade, by which they made a specified profit;
 secondly, owners, or part owners of ships registered at the port
 of *Hull*, and trading to and from it, and making a profit yearly,
 though the amounts of such profit did not appear, such owners
 being in some instances resident in *Hull*, and in other instances
 not; and, thirdly, a lessee of houses underlet by him at an ad-
 vanced rent, to persons who were rated, but on account of their
 poverty were excused from paying their rates; and if any one
 of these three classes was improperly omitted, the rate was *pro*
tanto wrong. The rate had originally omitted certain other per-
 sons resident in *Hull*, and having stock in trade there yielding
 profit, but it was conceded at the Sessions, that those persons
 ought to be added to the rate, and they were added accordingly.
 The case, therefore, as to admissions, is confined to the three
 sets of cases I have mentioned, and we are of opinion, that the
 first and second classes were liable to be rated, and were improp-
 erly omitted; but that the lessee in the third case was not liable,
 and that the omission, as to him, was right. It was urged upon
 the argument, that though the local act 9 & 10 *W. 3.* used dif-
 ferent language from the 43 *Eliz. c. 2.* yet that it ought to be con-
 strued as if language in both had been the same; but the Court
 intimated their opinion to the contrary, in the progress of the
 discussion; and they see no reason, upon further consideration,
 to change that opinion. The 43 *Eliz.* uses language applicable
 generally to the kingdom at large. The 9 & 10 *W. 3.* having in
 its view the town of *Hull* only, would naturally suit its expres-
 sions to the state and circumstances of that place; and where we
 find a deviation from the language in the statute of *Eliz.* the
 presumption is, that the deviation was intended, and that a dif-
 ferent system was thought better for *Hull*, and that the language
 proper for such system was therefore used. We are, therefore,
 to consider it the intention of the statute 9 & 10 *W. 3.*, that the
 rates should be raised by the taxation of every inhabitant, and of
 all lands, houses, tithes impropriate, appropriations of tithes, and
 all stocks and estates within the town. It was most properly
 admitted by Mr. *Coltman*, upon the argument that "stocks
 "and estates" must include all stock in trade and personal prop-
 erty. "Stocks" could have no other meaning, and "estates,"
 placed as it is in the clause, must extend to personal estates.
 This statute, therefore, has these two effective words, which are
 not to be found in the statute of *Eliz.*, and these two words re-
 move from this case all distinction between residents and non-
 residents. Under the statute of *Eliz.* there was no word appli-
 cable to personal property, and it was only on the ground of his
 being an inhabitant that any owner of personal property could be
 rated for that property, because there was no word in that statute
 to include him, except the word "inhabitant." Under that statute,
 therefore, there was necessarily a distinction between residents
 and non-residents, because the resident would be rateable for his

personalty within the place, the non-resident not. The distinction, however, under that statute, applied only to those kinds of property which the statute did not specify for the occupiers of lands, houses, &c., and whatever the statute enumerated was rateable, whether he were resident or not. In this statute, 9 & 10 W. 3., what was defective in this respect in the statute of *Elizabeth* is supplied; the rate is to be, not only upon every inhabitant, but upon all stocks and estates. Lands, houses, and tithes are all rateable, according to the general principles of rating, whether the occupier be resident or not; and it is impossible upon this act to say, that lands within the town shall be rated, but that stocks and personalty within the town shall not. The stocks and personalty are not rateable elsewhere, they have all the benefit of the town, and there can be no reason, therefore, why, when there are words sufficient to include them, they should not be included. We are, therefore, of opinion that the stock in trade and ships yielding profit are liable to be rated. It was pressed upon us in the argument that as the appellants had not made out what was each ship's profit, they had not given to the Sessions the means of amending the rate; and that the appeal, therefore, as to the ships, could not be supported. But besides that this is evading the question upon which, it is obvious, the Sessions wished for the opinion of the Court, it is founded upon the misapprehension of the duties of the parish officers, and of an appellant. Where property is rateable, it is the duty of the officers to include it in the rate, and to take what means they can to ascertain its value. It is not for them to omit it altogether, and to cast upon the appellant what is properly their duty, the burden of proving its value. In the case of a single omission, the difficulty upon the appellant might not be very great, but where all the property of a given description is omitted, the difficulty might be excessive. Before the 41 G. 3. c. 23. U. K., the omission of a single individual who ought to have been included, compel the Sessions to quash the whole rate; and so as he was rateable at all, the extent to which he was rateable was not in question. The stat. 41 G. 3. requires the Sessions to amend or alter a rate appealed against without quashing it, but with this proviso, that if the Sessions shall think it necessary for the purpose of giving relief to the appellant to quash the rate, they may do so; and when a rate contains so many omissions that it can hardly be expected of an appellant that he should have evidence to show the extent to which each person omitted ought to be rated, and where the investigation before the Sessions would be likely to exhaust more time than they could reasonably be required to give up, we think it would not be an improper exercise of their discretion to quash the rate, and make the officers do in the end what they ought to have done in the beginning. Another answer is, that the Sessions do not appear to us to have made this a ground upon which they wish for our opinion. As to the question of the lessee whose under-tenants have been excused from poverty, the point was not much pressed upon us in the argument, and we think the lessee not liable. The stat. 9 & 10 W. 3. imposes the rate, indeed, upon the lands, &c. without mentioning either occupier or owner; but as this is a burden commonly falling upon the occupier and rarely imposed upon the owner, we think the owner not compellable to bear it. The owner fixes his rent upon the supposition that this

is his tenant's burden; and, without very clear words to show that such was the intention, we think that we cannot make the landlord surety for the tenant. As to the question, Whether the rate upon the company should be according to the full amount of their profits, without making any deduction for the sum they are liable to pay for the poor-rate? we think the rate ought not to be so made. This property is to be charged according to its worth and value, in like manner and in the same proportion as other real property is charged in the same rate. If other real property is charged only at three fourths, or any other part of its value, after making deductions of the same nature as those which have been made in the case of the company, the company ought to be charged in the same proportion. If other real property is charged according to the rack rent actually paid by the occupier, and according to a rent so estimated, where the occupier is not a tenant at such rent, there will, even in those cases, be a virtual allowance in respect of the poor-rate, such a rent being in reality a part only of the worth or value of the land. The whole worth or value is made up of what is paid in rent, and what in rates and other outgoings. Land intrinsically worth 40*l.* a year can only pay a rent of 30*l.*, if it is to pay 10*l.* *per annum* in other ways; and in estimating a rent, both landlord and tenant look to the value of the thing on the one hand, and of the outgoings on the other, and the outgoings must be deducted from the value before the rent can be properly fixed. Whenever, therefore, the rate is according to the rent, which is generally the case, an allowance is virtually made for the poor-rate, and if this rate is made according to the rent, the company should have the allowance. The mode of estimating the allowance is a different thing. That suggested in the case is clearly wrong; for if 2225*l.*, the present rate, is deducted from the 8900*l.*, the rate upon 6675*l.* only will leave part of the rateable proportion of 8900*l.* free from rate. The allowance must be so made, that the sum upon which the annual rates are made, may, with the amount of the rates, make up the 8900*l.* This sum, according to the present rate, will be 7120*l.*, and the sum to be paid by the company will be 1780*l.* The process of calculation must be adapted to the amount of the rate; it is sufficient for us to propound the rule, leaving the process of calculation to others. Upon the whole, therefore, all the persons omitted, except the lessee of houses underlet by him, must be put upon the rate, the rate payable by the dock company must be reduced to 1780*l.*, and the case must be sent down to the Sessions, that they may introduce the proper sums if they find it practicable, or that they may quash the rate if it be not. — Order of Sessions confirming the rate quashed.

The proprietors of certain lime-stone quarries agreed to deliver to a canal company yearly such quantities of good lime-stone as the canal company should direct, at the rate of 7*d.*

250. *Rex v. Trent and Mersey Navigation, E. T. 6 G. 4. 4 B. & C. 57.* — The company were assessed to the relief of the poor of the parish of C., in the sum of 100*l.*, as occupiers of certain lime-stone quarries in that parish. On appeal, the Sessions confirmed the rate, subject to the opinion of this Court on the following case: By articles of agreement made the 10th of April 1776, between the *Trent and Mersey* navigation company, and T. G., and several other persons, proprietors of the different lime-stone quarries at or near C., according to their respective estates and interests in the said lime-stone, they, the proprietors, agreed with

the company yearly, and every year for ever thereafter, to deliver to the said company, their successors or assigns, or to such person or persons, and at such time and times as the company or their clerk should nominate and appoint, such quantities of good and merchantable lime-stone ready got and broke in the pits and quarries where the same should be got, as the said company or their clerk or agent should yearly direct or appoint, at and after the rate of *7d. per ton* for every ton of such stone, each ton to consist of 21 cwt., at 120 lbs to the cwt. (of which quantity notice was to be given before the last day of *October* in the preceding year); and further, that if they, their heirs or assigns, should at any time thereafter neglect or refuse to deliver such quantities as should be required, it should be lawful for the said company, their successors or assigns, and such person or persons as they or their clerk or agent should from time to time nominate and appoint, to enter into and upon the lands, grounds, or stone quarries of any of the said proprietors of lime-stone, their heirs or assigns, and to get, take, and carry away such quantities of lime-stone as they should think proper out of any of the pits or quarries aforesaid, paying after the rate of *2d. per ton*, to be computed as aforesaid for the same, (such stone to be got in a regular and proper manner,) which said articles of agreement were afterwards confirmed, with additional regulations, by an act of the 16 G.3.c.32. In pursuance of the said agreement and act of parliament, the proprietors of the said quarries of lime-stone did for some years supply the appellants at *7d. per ton*, from certain quarries mentioned in the agreement and act of parliament; but having subsequently neglected to deliver the quantity of lime-stone required according to the agreement and act of parliament, the appellants, in 1795, by virtue of the said agreement, entered into a part of the land containing the lime-stone, called the quarter piece, in the act of parliament mentioned, situate in the respondent parish, which said part of the said land was in the occupation of *G. Woolstcroft*, he being proprietor thereof with *R. Woolstcroft*. The appellants have got the lime-stone out of 13 acres of the said part of the land called the quarter piece (the whole containing 17 acres,) and still continue to get the lime-stone out of the remainder, paying the proprietors at the rate of *2d. per ton*, according to the agreement and act of parliament. The appellants do not sell or make any profit of any of the said lime-stone within the respondent parish. They merely get the lime-stone out of a quarry, from which it is conveyed along a rail-road made for the purpose by the appellants, to a place called *Froghall*, situate in the parish of *Kingsley*, where it is sold to other persons, who burn it into lime. For some time previous to the time of the rate, whilst the appellants were so getting the said lime-stone, the said *G. Woolstcroft* was in the occupation of the surface of the said part where the appellants were not actually working, and has planted part of the land from which the lime-stone has been got. During such time also the said *G. W.* has been rated to the relief of the poor of the respondent parish in respect of the said part of the said land called the quarter piece, and has paid *6l.* as his rate for the same, until *January 1822*, when his rate was reduced to *2l.*, and a rate of *4l.* imposed upon the appellants in respect of their assessment for the lime-stone quarries so worked

per ton, and if they should at any time neglect to deliver the quantities required, it should be lawful to the company to enter into or upon the lands or lime-stone quarries of any of the proprietors, and to take such quantities of lime-stone as they should think proper, paying *2d. per ton*. The proprietors of the lime-stone quarries having failed to supply the lime-stone required, the company entered, and continued for more than twenty years to work the quarries, and take the limestone at *2d. per ton*: Held, however, that the company had not any exclusive occupation, but a mere privilege, and, consequently, that they were not liable to be rated to the poor.

by them under the said agreement. — THE COURT desired that the case might go down to the Sessions again in order to ascertain whether the company had been in the exclusive occupation of the quarry. In order to save expence, affidavits were filed, by which it appeared that the owners of the quarry having, in 1796, failed to furnish the company with the stone required, they entered, and had ever since worked the quarry themselves, paying 2d. a ton for the stone gotten. No other person had ever worked or attempted to work stone there except the company. These affidavits having been commented upon by each side, ABBOTT C.J. now gave judgment. This question came before the Court under such peculiar circumstances that it was not likely that any case would be found bearing materially upon it. None such has been discovered; nor is it probable that our decision can form a precedent for any other case. The question is, Whether, under the contract set out in the case, and that which has taken place under it, the company were occupiers of the quarry in respect of which they were rated? The contract is, that the owners of the quarry shall supply, at a certain price, as much stone as the company think fit to order; and that if they neglect to do so, the company may enter and work the stone for themselves, paying to the owners a certain sum for every ton so worked. The owners having neglected to supply the stone ordered, the company many years ago entered, and have ever since worked the quarry for themselves; and, in point of fact, no one else has ever got stone there. But the right of the company was merely to get there what stone they might think fit; there was nothing in the contract to prevent the owner from giving to others also the privilege of getting stone in the same quarry. The company, therefore, had not any sole and exclusive occupation, but a mere privilege, and, consequently, were not liable to be rated to the relief of the poor. — Order of Sessions quashed.

The burgesses of Nottingham, and the occupiers of ancient messuages there, had, as such, for a certain portion of the year, a right to turn cattle into certain fields, and to exclude during that period the owner of the soil: Held, that this was a mere right of common and not rateable to the relief of the poor.

251. *Re v. Churchill and Booth, M. T. 6 G. 4. 4 B. & C. 750.* — C. and B. appealed against a poor-rate for the town and county of the town of N. on two grounds: First, that they were improperly rated for certain lands of which they were not occupiers; and secondly, that other persons who were occupiers of lands were not included in the rate. The Sessions amended the rate by striking out the names of the appellants from the rate in respect of the land for which they were respectively rated, and as to all other persons named therein they confirmed the rate subject to the opinion of this Court on the following case: The town and county of the town of N. consists of the three parishes of *St. Mary*, *St. Peter*, and *St. Nicholas*. In the parish of *St. Mary* there are large fields or tracts of land called the Sand Field, the Clay Field, and the meadows belonging to different persons. The land called the meadows, consists of about 280 acres to the pasturage and herbage, of which the burgesses resident in the said three parishes, even if they are inmates not renting or holding any tenement or hereditament whatever are exclusively entitled; and to turn in three head of large cattle each from *Old Midsummer-day* to *Old Lammas-day*, when all the cattle are taken out and the pasturage is laid to the 3d of *October*, when the said burgesses are again exclusively entitled to turn in a like number of cattle until the 2d of *February* following, which pasturage and herbage is of the value

of 10s. *per acre* between *Old Midsummer* and *Candlemas*. The quantity of land in the sand and clay fields comprises about 650 acres, fenced off into different sized closes, belonging to different individuals. The said burgesses resident in the said three parishes, and also the occupiers of ancient messuages in the said three parishes, and who, as such occupiers, are severally rated to the poor in their respective parishes in respect of their messuages and other property, but not for such common right claim, and such of them as choose, exercise the right to turn in three head of large cattle from *Old Lammas-day* to *Old Martinmas-day* in every year, during which period neither the owner of the freehold nor the tenants have, as such, any right to turn in cattle therein, and during that period the pasturage and herbage of the said fields are also of the value of 10s. *per acre*. The several persons named in the notice of appeal, and who have been duly served with the same, had each of them cattle, some three, some two, and some one, in either the fields or meadows, during some part of the time the same were commonable, and at the time of making the said rate; but none of such several persons were included in the said rate for so depasturing their cattle, nor has it ever been usual in the said parish of *St. Mary* to rate the persons turning into the fields and meadows during the time of their so being open; and the Court of Sessions refused to quash or amend the rate on account of such burgesses and occupiers of ancient messuages being omitted to be rated, from the impossibility of ascertaining and rating the whole of such persons so turning into the said fields and meadows for their actual occupation and enjoyment, there being upwards of 2000 burgesses entitled so to turn in, besides the occupiers of many hundred messuages, many of whom exercise such rights in different modes and at different times, as by turning in one or more head of cattle for a night or a day, and in other ways; and there being no coin small enough to assess some of them, if they were liable to be rated only for their actual occupation and enjoyment. — BAYLEY J. In order to prove a person liable to be rated, it is necessary to show that he is an inhabitant or occupier of lands, houses, &c. The question here is, whether the persons whose names are alleged to have been improperly omitted out of the rate were individually occupiers of land. The word *common* is well known to the law, and Lord Coke says, that there are four kinds of common of pasture; common appendant, which is appendant to arable land; common appurtenant, for which one must prescribe (in a *que estate*); common *per cause de vicinage*, which is but an excuse for trespass; and common *in gross*, which is so called for that it appertaineth to no land, and must be by writing or prescription. Land lies in livery, but a right of common in grant. Does that for which it is attempted to rate the burgesses of *Nottingham* lie in grant or in livery? Each has a right to turn three cattle upon certain fields during a certain portion of the year. It is claimed by them as burgesses and as occupiers of ancient houses. Could they be enfeoffed of such a privilege? If not, it is plain, that they have no right to the soil, but merely an incorporeal hereditament, a right of common by prescription, which is not rateable. The order of Sessions was therefore right. — HOLROYD J. I think that the burgesses cannot be rated in respect of their right to turn cattle upon the lands in question. It appears to me, that

(a) 1 Saund. 339.

the right is vested in the corporation for the benefit of its members. A profit *a pendre* in the soil of another cannot be claimed by custom, except in the case of a copyhold or tenant right, where it is claimed in the soil of the lord. In other cases it can only be claimed by grant or prescription; now the burgesses in this cannot take as a corporation, and cannot prescribe for the right in themselves according to the cases of *Mellor v. Spate-man*. (a) Supposing, therefore, that there was a possession in law of those fields, so that trespass might have been maintained either by the corporation or the burgesses, I think it must have been by the corporation. But this appears to me a mere incorporeal right, and not within any of the words in the statute 43 Eliz. c. 2. Land to which a right of common is attached, may, on that account be rated at a higher value, but the right of common is not rateable *per se*. — LITLEDALÉ J. I think that the burgesses could not, as individuals, be rated. They had a mere right of common, and, according to the decided cases, that is not the subject of rating. It is said that the exclusive pasturage gave them the exclusive interest. I think it had not that effect, and that they could not maintain trespass, as persons having the *primam vestimentum*. The right enjoyed by these burgesses could only be claimed by prescription in the name of the corporation. According to *Com. Dig. Prescription*, (H.) there may be a prescription for sole and several pasture, so as to exclude the owner of the soil, as appears also by *Hoskins v. Robins* (b), and under such circumstances the persons enjoying the right may grant it to others. But in this case no such grant to others could be made by the burgesses: the exclusive right was in the corporation, and they had it but for a limited time, and could only take it by grant or prescription. The burgesses could not take it by either of those modes, which shows that they had a mere privilege of turning on cattle, in respect of which they were not rateable. The order of Sessions must therefore be confirmed. — Order of Sessions confirmed.

(b) 2 Saund. 324.

By an act of parliament a company was established for the lighting the town of B. with gas, and they were authorised, with the consent of certain commissioners (appointed under another act of parliament passed for lighting and paving the town of B.) to break the ground and lay their pipes in the streets of B. The company having so laid their pipes for the purpose

252. *Rex v. Brighton Gas-light Company*, E. T. 7 G. 4. 5 B. & C. 466. — Upon an appeal against a rate for the relief of the poor of the parish of B., made upon the *Brighton Gas Company* of the sum of 6*l.*, for and in respect of the mains or pipes, and other apparatus for the conveyance of gas belonging to the company, situate, being, and fixed in the ground in the parish of B., the Court of Quarter Sessions confirmed the rate, subject to the opinion of this Court on the following case: The company was established by statute 58 G. 3. c. 37., entitled "An Act for lighting with gas the town of B., in the county of S.," which is declared a public act. The buildings and manufactory are in the parish of R.; the mains or pipes forming the subject of appeal are in the parish of B., placed in the ground, and covered over. The gas is sold in B. It is a manufactured article, and the profits of the manufactory arise from the sale of gas and coke, of which the gas is conveyed in mains or pipes, and the coke in carts. The mains or pipes within the parish of B. produce no profit but by conveying gas. They are worth 360*l.* *per annum*, at the least, to any person who could use them for that purpose; and it was further proved, by the testimony of a witness, that he would be willing to give 400*l.* *per annum* for them, taking all chances, both at law and in fact, as to the mode in which

he might employ them; but that he formed his calculation upon a moral certainty of being able to employ them for conveying gas. The expence of putting them down amounted to 10,000*l.*, or upwards, and the sum of 40*l.* *per annum* at which the mains or pipes are assessed, is a ninth part of the estimated value of 360*l.*; that being the proportion in which other rateable property at *B.* is rated. Personal property is not rated in *B.*—BAYLEY J. To make property rateable it must come within the words of the statute 45 *Eliz.* The only question in this case is, Whether the company can be deemed occupiers of land, and to the extent to which they are rated? The company are empowered by an act of the 58 G. 3., with the consent of the commissioners for paving and lighting the town of *B.*, to break up the soil of the streets and roads, dig and sink trenches, and lay pipes, and to alter the position of, and to repair and relay such pipes. If it were doubtful in this case, whether the pipes constituted part of the freehold, the company would, at all events, be liable to be rated for an occupation way; but I think that we may collect from the case, that the pipes are fixed in the soil; and, if so, then *Rex v. The Corporation of Bath* (a) establishes that they are to be deemed occupiers of that land in which the pipes are fixed. *Rex v. The Rochdale Water-works Company* (b), and *Rex v. The Birmingham Gas Company* (c), establishes the same principle. In the latter case, part of the apparatus used for the manufacture of gas and coke was affixed to the freehold, and part was not, and it was held, that the company were liable to be rated to the extent of their occupation of land, and that the branches and pipes were to be considered part and parcel of the land. In the case of a canal, the proprietors are rateable, not only in the parish where the tolls are collected, but in each parish where they occupy land for the purposes of their canal. In many acts of parliament, authorizing the making of a canal, it is provided; that the company shall not be rated at a higher rate than the adjoining land; but if there be no such provision, then they must be rated in respect of the value which the land has acquired, from its having been used for the purposes of the canal. There is no such provision in this case; and as the pipes are laid down so as to become part and parcel of the land for the time they remain, they thereby improve the value of the land in the same manner as buildings erected upon the land, and the whole must be rated accordingly. I entertained some doubt at one time, whether the right of the company to remove the pipes might not prevent their being rateable in respect of the increased value of the land; but upon reflection, it appears to me, that that makes no difference, because they must be rateable upon the same principles as buildings are, which may be removed at the end of the term. There are cases which, in principle, are similar to the present. Thus, a person who had the exclusive occupation of a waggon-way, and not a mere right of passage, has been held to be rateable. Upon these grounds I am of opinion, that this property is rateable. Secondly, that it is rateable to the extent of the value of that which for the time constitutes part of the freehold. Thirdly, I am of opinion, that the rate is properly made in *B.* and not in *R.*; because the rate must be upon the land occupied by the company, and here the land occupied is in the

of conveying the gas were held to be rateable to the poor in respect of the land occupied by their pipes, and to the extent of the increased value of the land in consequence of its being used by them for the purpose of conveying the gas.

(a) *Ante*, pl. 104.

(b) *Ante*, pl. 105.

(c) *Ante*, pl. 245.

- parish of *B.* — *HOLROYD J.* I am of opinion, that the Gas Company are liable to be rated in respect of this property, and that they are liable to be rated in respect of the increased value of the land. The first point is decided by many cases which are similar in principle to the present. In one case it was held, that a weighing machine affixed to a building was liable to be rated, on the ground that the land and building constituted one entire thing, and that the house was much more valuable from the machine being appurtenant thereto. *Rex v. St. Michael's, Gloucester.* (a) In another case it was held, that where a carding-machine was demised with a building, but not fixed to it, but forming one entire subject, the rate being on the building, that was properly rated for the entire profits, the house acquiring a greater value from the use to which it was put, *Rex v. Hogg.* (b) I think, therefore, that so long as the company used the land for the purpose of their pipes they are rateable, for they have the exclusive occupation of that part of the land in which their pipes lie; and that they are rateable for the entire profits of that land, part of them arising from the gas pipes placed in the land. — *LITTLEDALE J.* The rate must be upon the land. Here, the pipes being fixed to the land, the land and pipes are to be considered as one entire thing. The only difficulty in the case is, whether the company are to be considered as occupiers of land. They are authorised, with the consent of the commissioners mentioned in the act of parliament, to break the soil for the purpose of laying their pipes. Now, in *Dyson v. Collock* (c) it was held, that the contractors for making a navigable canal having, with the permission of the owner of the soil, erected a dam of earth and wood upon his close across a stream there for the purpose of completing their work, had a possession sufficient to entitle them to maintain trespass against a wrong doer. This is an authority to show, that the company were virtually in the occupation of the land, and being in the exclusive occupation of that portion of the land in which their pipes lay, they are rateable within the principles laid down in *Rex v. The Corporation of Bath*, and *Rex v. The Rochdale Water-works Company.* — Order of Sessions confirmed.
253. *Rex v. St. Peter the Great, E. T. 7 G. 4. 5 B. & C. 473.* — On the 4th June 1825 the churchwardens and overseers of the poor of the parish of *St. Peter the Great*, in the county of *Worcester*, made a rate for the relief of the poor, in which the company of proprietors of the *Worcester and Birmingham Canal Company* were rated for land, for wharfs, basin, warehouses, engine-house, lock-house, gardens, and premises, and for tolls and profits arising therefrom, 11*l.* 4*s.* 5*d.* — Upon appeal the Court of Quarter Sessions amended the rate by reducing the sum of 11*l.* 4*s.* 5*d.* to the sum of 14*s.* 0*d.*, and confirmed the rate so amended, subject to the opinion of the Court, on the following case: By an act 31 G. 3. it is enacted, That the said company of proprietors shall from time to time be rated to all parliamentary and parochial taxes and assessments, for and in respect of the lands and grounds to be purchased or taken and all warehouses or other buildings to be erected by the said company of proprietors, in pursuance of this act, in the same proportion as other lands, grounds, and buildings, lying near the same, are or shall be rated; and as the same lands, grounds, and buildings, so to be purchased or taken and erected, would be rateable in case the
- (a) *Anle*, pl. 180.
- (b) *Anle*, pl. 186.
- (c) 5 B. & A. 600.
- By a canal act of the 31 G. 3. c. 31. § 77. it was enacted that the company should be rated to all parochial taxes in respect of their lands, &c. in the same proportion as other lands lying near the same should be rated, and as the same lands would be rateable in case the same were the property of individuals in their natural

same were the property of individuals in their natural capacity. And by an act of the 38 G. 3., for amending and enlarging the powers of the 31 G. 3., after reciting that the said last-mentioned act had, in some respects, been found defective, and the exercise of some of the powers and provisions thereof as therein directed, inconvenient, it is enacted, that the said company of proprietors shall from time to time be rated to all parliamentary and parochial taxes, rates, and assessments, for and in respect of lands and hereditaments taken and used by the said company, for the purposes of the said navigation; and all warehouses and other buildings erected or to be erected thereon by the said company of proprietors, by virtue of the said act, and of this present act in the same proportions as other lands, grounds, and buildings adjoining or lying near the said canal, are or shall be rated; but it shall be lawful for the said company to agree with any owner or owners of any lands or hereditaments of sufficient yearly value adjoining or lying near to the lands or hereditaments, to be purchased or taken for the purpose of the said navigation, for an exemption from all rates and taxes, in respect of such last-mentioned lands and hereditaments, and for charging the same upon the adjoining lands and hereditaments of such person or persons, and in all such cases all the parochial and other taxes, rates, charges, and assessments which might be thereafter charged upon or payable in respect of the lands or hereditaments to be so purchased or taken for the purposes of the said navigation; shall be rated and charged upon such adjoining lands, and upon the owners and occupiers thereof; and the lands and hereditaments to be purchased for the purpose of the said navigation shall be exempted and discharged therefrom. And it is in the same act further enacted, That all parochial rates and assessments, which shall or may at any time be laid, assessed, or imposed upon the rates and personal estate of the company of proprietors, shall be laid, assessed, or imposed in each parish, township, hamlet, or place respectively, in proportion to the length of the said canal in each respective parish, township, hamlet, or place, and not otherwise. And also in the same act it is enacted, That the said act of the 31 G. 3., and all and every the clauses, articles, provisions, matters, and things therein contained, (except such and so many of them, or such parts thereof as are altered, varied, explained, or amended by this act,) shall extend and be applicable to the present act, and the powers, provisions, and directions hereof, in so far as the same are compatible herewith. The question for the opinion of the Court was, Whether the land used for the canal was to be assessed at the same rate as the adjacent lands; or whether the profits derived from the tolls were to be included in the rateable value? If the Court should be of opinion that the land so used is to be assessed at the same rate as the adjacent lands, then the rate was to stand as amended by the Court of Quarter Sessions; but if the Court were of opinion that the profits derived from the tolls were to be included in the rateable value then the rate was to be amended, by inserting the sum of 11*l.* 4*s.* 5*d.*, instead of 1*l.* 0*s.* 4*d.* — BAYLEY J. This case is perfectly clear; it is in effect decided by *The King v. The Grand Junction Canal Company* (a); *Rex v. St. Mary, Leicester*. (b) These cases establish this principle,

capacity. By a subsequent act of the 38 G. 3. c. 31. § 20., it was enacted that the company should be rated to all parochial taxes in respect of the lands used by them for the purposes of the said navigation, in the same proportion as other lands and buildings adjoining or lying near the canal should be rated; but it was further enacted, that it should be lawful for the company to agree with any owner of lands adjoining their lands, taken for the purpose of the said navigation for an exemption from all rates and taxes in respect of such lands, and for charging the same upon the adjoining lands of such persons, and in all such cases the parochial taxes, rates, &c. which might be thereafter charged upon, or payable in respect of the lands so taken for the purposes of the said navigation should be rated and charged upon such adjoining lands, and upon the owners and occupiers thereof, and the lands of the

(a) *Ante*, pl. 240.

(b) *post*, vii. pl. 791.

company should be exempted and discharged therefrom : Held, first, that by 31 G. 3. c. 31. § 77., the company were not liable to be rated for the land used for the purpose of the canal according to its improved value; held, secondly, that the 77th section of the 31 G. 3. was not repealed by the 20th section of the 38 G. 3., and that the company were not liable to be rated for the improved value of the land.

that, unless there is some clause of exemption in the act of parliament, land taken for the purpose of a canal will be rateable, not according to the value of the land when it was taken for the purposes of the canal, but according to that value which it has acquired from its having been used for the purposes of the canal. But canals are supposed to be of public benefit, and, therefore, some of the acts of parliament under the authority of which canals have been made, have clauses of exemption, so as to leave land upon the same footing, in this respect, as it was when it was first taken for the purposes of the canal. It is conceded the language of 31 G. 3. is not distinguishable from that of 34 G. 3. in the case of *The King v. The Grand Junction Canal Company*. It has been argued, that the true construction of this clause is that the rates are to be equally laid upon all the property assessed, and that it is only confirmatory of the common law in that respect; but, in construing acts of parliament, we are bound to give statuteable effect to the words used in them; and so construing them, I think the effect of that clause is to exempt the company from being rated in respect of the increased value of the land, derived from its having been used for the purposes of the canal. But it is said that the 77th section of the 31 G. 3. is virtually repealed by the 20th section of the 38 G. 3., and that the latter statute places the company in the same situation as if the former act had not passed, and makes land taken for the purpose of the canal liable to be rated according to its increased value. Now, if the legislature had intended to repeal that clause by the 38 G. 3., it would have been very easy to have done so by a clause, stating specifically that lands taken for the purposes of the canal should be rated according to their proved value. It may fairly be concluded, that if the legislature had contemplated any change of purpose in this respect, they would have expressed that intention in clear and unambiguous language. It seems to me, that the latter part of the 20th section of the 38 G. 3. puts this beyond all doubt. It gives power to the canal company to make specific bargains for the purchase of lands exempt from rates, and to shift the rates of lands taken by the company, and to place them upon certain other lands in the hands of individual proprietors. In that case the value, at the time of the sale, must remain the rateable value, and there is no reason for supposing that a different rate would be payable if the company made no such bargain. — Order of Sessions confirmed.

Where a poor-rate was imposed upon "a lighthouse, together with the duties and contribution money payable in respect of ships passing by the same," and the lighthouse was occupied by a servant of the owner, and was situated in the

254. *Rex v. Coke, T. T. 7 G. 4. 5 B. & C. 797.* — Upon an appeal by *T. W. Coke, Esq.* against a rate for the relief of the poor of the parish of *Lydd*, the Sessions confirmed the rate, subject to the opinion of this Court on the following case: By letters patent, dated the 28th June, 13 G. 2., that King granted to *Thomas Lord Lovell*, his executors, &c., all that the lighthouse at or near *Dungeness*, in the county of *Kent*, and free leave, licence, power, and authority to maintain, continue, and renew the same with lights, to be continually burning therein in the night-season, from time to time, and (if need were) to alter, remove, and change the same, and to rebuild another at any place near the same, by the advice or direction of the masters, wardens, and assistants of the *Trinity House, of Deptford Strond*, for the time being, and such lighthouse so rebuilt to remain, continue, and renew with lights,

to be continually burning therein in the night-season, in such manner as might be for the safety and direction of the traders that way: and for defraying the necessary charges in maintaining, continuing, altering, renewing, removing, and changing, or rebuilding the same, the King did thereby grant, that during the term of years thereafter granted the said *Thomas Lord Lovell*, his executors, &c. should and might collect and receive to his and their own proper use, towards the charges aforesaid, 1*d.* by the ton from all merchants, masters, or owners of all ships, hoys, and barks, passing by the said lighthouse, outward bound, and the same inward bound, and the same from strangers as often as they should pass by the lighthouse, for 60 years from the 24th June 1768, subject to the yearly rent of 6*l.* 13*s.* 4*d.*, payable to the Crown half-yearly. The letters patent then provided for the collection of the tolls, and that no other person should erect any lighthouse within five miles of *Dungeness*. All the estate and interest, under the said letters patent, are and have for many years past been vested in the appellant *Mr. Coke*. The lighthouse and lights are kept up at his expence, and a person paid and employed by him resides in the lighthouse, for the purpose of attending, and attends the lights. The duties or contribution-moneys are collected at the various ports of arrival and departure of ships passing the lighthouse, by persons paid and employed by *Mr. Coke*. There is not any port or any custom-house within the town, liberty, or parish of *Lydd*, nor have any duties or contribution-money ever been collected within the said town, liberty, or parish; nor do any of the ships, in respect of which the duties or contribution-money are paid, come within the said town, liberty, or parish, but the same pass up and down the channel in front of the said parish and lighthouse, in the open sea, at different distances from the shore, along which the said parish extends eight miles and upwards, the lighthouse standing on the sea-shore, above high-water mark, and within the said parish. The annual value of the lighthouse, independently of the duties or contribution-money, would be 4*l.* *Mr. Coke* does not reside or inhabit within the town, liberty, or parish of *Lydd*, nor occupy or possess any property within the town, liberty, or parish, in any manner whatever, except as aforesaid. Personal property, stock in trade, or the profits of manufactories, never have been rated in the parish of *Lydd*, nor are assessed by the rate in question, up to the time of making which the lighthouse had been rated as a cottage only, at the sum of 40*s.*, and the duties or contribution-money had never been rated or taken into account in making the rate. The rate in question was made on the 2d of April 1825, and *Mr. Coke* was rated therein as "the occupier of the lighthouse, with the duties or contribution-money in respect of ships, hoys, and barks passing by the same;" the annual value of the same being stated to be 2250*l.* The duties or contribution-money, yearly collected for *Mr. Coke*, under the above-mentioned letters patent, amount to the sum assessed in the rate over and above the expence of keeping up the lighthouse and lights. — *BAYLEY J.* It seems to me that this house is rateable, but that the rate to the extent to which the parties are desirous of carrying it cannot be supported. The rate is upon the lighthouse, with the duties or contribution-money in respect of ships, hoys, and barks passing by the same. To make the defendant rateable

parish, but the duties were collected out of the parish: Held, that these duties did not constitute part of the annual profits of the house or land where the light was placed, and were not rateable to the poor.

- to the full extent of 2000*l.* a year, it must be shown that he comes within the words of the stat. 43 *Eliz.*, and is the occupier of a house or land of that annual value. The authorities cited in the course of the argument are distinguishable from the present case, except
- (a) *Ante*, pl. 166. the two cases *Rex v. Rebowe* (a) and *Rex v. Tynemouth* (b), where
- (b) *Ante*, pl. 225. it was expressly decided that the tolls of a lighthouse were not rateable. A considerable time elapsed between the decisions in those cases. And where there has been one uniform course of proceeding, as to property of this description, for a very considerable period of time, we ought not to introduce any alteration, unless it be founded upon sound legal principles. The privilege of erecting lighthouses was, I apprehend, originally in the Crown. I believe it was afterwards vested in the Trinity House. The tolls are contributed by the proprietors of ships, and if the sums of money, which they from time to time pay, be properly proportioned, they will contribute a sum sufficient to remunerate the proprietor for the expence of keeping up the lighthouse, and to leave a moderate and reasonable profit for the trouble of renewing the light. If the proprietor of the lighthouse be rateable to the poor, the contribution which he will expect from the proprietors of ships must be proportionably larger, and they in reality will pay the rates, which will therefore become a burthen upon commerce. In *Rex v. Sir A. Macdonald and others* (c) the rate was upon the lock, and the defendants were rated as occupiers, in respect of the use of the land which they had in the parish, for the lock-dues were payable in respect of the use of the lock, which itself formed part and parcel of the land. In *Rex v. The Oxford Canal Company* (d) the company were rated as the occupiers of the towing-path land, and that part of the canal lying within the parish of Sow. The rate was specifically upon the land. The proprietors of the canal were occupiers of the land, and it was in respect of that occupation and that only that they were chargeable. The decision of the Court was, that the canal company were liable to contribute to the parish of Sow, in respect of the use of the land in that parish. *Rex v. Bradford* (e) is very different from the present case. There the defendant was assessed as the occupier of a canteen. The commissioners for the affairs of barracks demised to *Bradford* a canteen in *Hythe* barracks, to hold for one year, provided the barrack should be so long held by government and used as a barrack. *Bradford* was to pay for the same the rent of 15*l.* for the canteen and buildings, and the further sum of 510*l.* for the privilege of using the same as a canteen, and selling therein liquors and other articles legally sold by sutlers, and there was a power of distress for the aggregate amount. It was held, that the canteen was rateable for the entire value of the house and privilege, that being a profit appurtenant to the tenement, arising from its local situation, and *Bradford* being the occupier of a tenement of that value. In
- (c) *Ante*, pl. 235. *Rex v. The New River Company* (g) there could be no doubt that the rate was properly imposed. There the land in the parish of *Amwell* produced a certain quantity of water, which, when it had travelled up to *London*, fetched a given price. *The New River Company* sold in *London* water which the land in *Amwell* had produced. There could be no doubt that there the land in *Amwell* yielded at the place where the water rose a profit equal to the value of the water. It was part of the produce of the land of that parish, for although it was sold and the value realized at a different
- (d) *Ante*, pl. 110.
- (e) *Ante*, pl. 231.
- (g) *Ante*, pl. 231.

place, it still constituted part of the profit of the land in the parish, and was rateable there, in the same manner as land producing vegetables is rateable in the place where they are grown, and not where they are sold; and that although the proprietor of the land be under a contract never to sell in his own parish, but at a distant place. *Res v. The New River Company* does not bear upon the present case, because the proprietor of the lighthouse in this case is at liberty, either in that house or any other which he may think fit, to erect or to rent, to burn lamps, and to produce a stream of light which shall be visible a considerable distance at sea. But even if by the terms of the letters patent it were imperative on the grantee to burn his lights within this particular lighthouse, still if the privilege is not given to him by reason of his being the occupier of that house, it would be appurtenant to, but distinct from, the house where it was to be exercised, and the duties payable to him in respect of the light would be profits arising from the exercise of that privilege, and not from the house or land where it happens to be exercised. The grantee would in that case have an exclusive privilege of carrying on in that particular house (if I may so express myself) a particular description of trade. But there would be no necessary connection between the freehold interest in that house and the light which is to be kept up in it. The apparatus which is to contain or produce the light may or may not be attached to the freehold, and if it were wholly unconnected with the freehold it might produce all the effect which is produced in a lighthouse. Suppose that effect were produced by hanging up a quantity of lighted coals with a reflector behind them, any sums payable by the owners of ships for the benefit which they might by possibility derive from that fire, would not constitute any part of the profit of the house or land where the lighted coals or reflector happened to be placed, but would be profits arising from the privilege. Then as all the purposes contemplated by the grant may be attained by forming the apparatus to produce the light in such a way as not to be connected with the building, and in that case, the tolls payable by the ships would not constitute any part of the profits of the land, and would not, therefore, be rateable, it seems to follow that the exclusive privilege of having the lights, even if the grant required them to be placed in a particular house, is distinct from that house or building, and the duties and contributions are profits arising from the exercise of the privilege, and not from the house or land where it is exercised, and those profits are not rateable as constituting part of the value of that house or land. And if it be once ascertained that the tolls and duties, *quæ* tolls and duties are not rateable, then, although the business must be carried on in a house, or even in this specific house, a distinction must be taken between the value of the house in which that particular trade (for I consider it a species of trade) is carried on, and the profit arising from the trade itself. Now here the nature of the trade is, that the proprietor of the lighthouse is to keep certain lights burning. Those lights are not of necessity attached to the freehold, and if they are not attached to the freehold they would be personal property. The proprietor of the lighthouse does no more than keep a candle or a fire lighted, and for keeping his lights, whether produced by candle, or by burning of coals, or by oil, and for keeping mirrors behind those lights the tolls and duties which are the sub-

ject of the rate are imposed. Such tolls down to the present time never have been rated, and in my opinion they are not rateable.—
 HOLROYD J. This is a rate made not upon the lighthouse alone, but upon the lighthouse together with the duties or contribution-money, in respect of ships, hoys, and barks passing the same. I am of opinion that the lighthouse is rateable for the sum at which it may be valued, but that the tolls and duties are not rateable. We cannot hold them to be rateable unless we overturn the cases of *Rex v. Rebowe*, and *Rex v. Tynemouth*, and the principles upon which those cases have been decided, as well as others in which it has been held that tolls, although not rateable *per se*, are rateable where they can be considered as money paid for the use and occupation of land. The case of *Rex v. Rebowe* was very similar to the present. There the King by letters patent, granted to Sir J. Rebowe liberty to erect lighthouses at Harwich, and towards the maintenance of them certain duties and tolls were made payable by all ships passing or coming into that harbour. That was a franchise granted by the crown; it differs from many others which are called so, but the privilege granted was a franchise. The power to erect lighthouses originally belonged to the Lord High Admiral, and afterwards was granted to the *Trinity House*. What is the toll payable for? Not for any benefit received within the parish, for it is payable every time the ships pass the lighthouse, whether any benefit be received or not by the ships, whether they pass by day when the lights are out, or whether they pass in the night when the lights are burning. In *Rex v. Rebowe* the rate was made upon the tolls and duties, and Lord Mansfield says, "They have, properly speaking, rated the fire and the profits arising from the house; the *Pantheon* playhouse, and other places of public amusement are rated, I suppose, but not for their profits." And after taking time to consider, Lord Mansfield, and all the judges were of opinion, that Mr. Rebowe ought not to be rated for the tolls: he says, "the *property* is not in the parish." By property he does not mean the lighthouse, but the tolls, which did not arise from any benefit received in the parish by the persons paying toll. He afterwards says, "the tolls are not locally situate in the parish, and are not rateable there." If they were to be considered as part of the money for which the lighthouse might be rated, they might have been rated under the denomination of tolls. At a considerable interval of time after the decision of that case came the case of *Rex v. Tynemouth*. There Mr. Fowke was rated for tolls in respect of his lighthouse. Lord Ellenborough, after stating that the case was similar to that of *Rex v. Rebowe*, says, "What local property is there within the township on which this rate on the tolls can be levied? The tolls are not received there, nor do the ships from which they are collected, come within the township, the subject-matter of the rate has no *locality* within the township." Lord Ellenborough is there speaking of the tolls and not of the lighthouse, as the subject-matter of the rate, for the lighthouse was within the township. Now in this case, the profits of the lighthouse arise from the tolls which are rated under the name of duties and contributions. I think, according to these two cases we must decide, that the tolls not being received, and having no locality within the parish of Lydd, are not rateable. In *Rex v. Cardington* (a) the

(a) *Ante*, pl. 172.

tolls for passing a sluice were rated. The party who paid the tolls used the thing, for the use of which they were paid; and the benefit for which the tolls was paid, was within the parish; the Court held, that whether or not, the profits of the sluice were rated as tolls, the nature of the property rated was to be considered, and the tolls being paid for a use of something which conferred a benefit within the district where the rate was made, they confirmed the rate. Here the benefit for which the tolls are paid (which are an incorporeal hereditament) is not one of the things mentioned in the statute of the 43 *Eliz.* For it constitutes a benefit not received within the parish, but received by ships elsewhere, or not received at all if they pass in the day-time, when no light is burning. Unless, therefore, we act contrary to the decision in *Rex v. Rebowe*, and *Rex v. Tynemouth*, and to the principles acted upon in other cases where tolls have been recognized as rateable, when paid or earned within the district for which the rate was made, we must decide that the tolls are not rateable. — LITTLEDALE J. It seems to me that the rate ought to be confined to the value of the lighthouse, exclusive of the tolls or dues. The annual value of the lighthouse is stated to be 4*l.* It is admitted that tolls *per se* are not rateable. But in some cases where they arise from and are so far connected with a house or land, that the land or house which gives occasion to the toll is made more valuable in itself, that increased value depending upon and being regulated by the profits produced by the toll, is the subject of the rate. In all those cases the profits have arisen, and the use of the thing out of which they have arisen has been in the place or district where the rate is made. Here the profits do not arise, nor does the use of the light take place in the parish of *Lydd*, and this case, for that reason, does not fall within the authorities which have been referred to in the course of the argument. But then it is said that the light itself is the cause of the toll or profit by the benefit it confers on ships passing; that it is connected with the house; and that the profits arising from the light constitute part of the value of the house, and that the whole forms one entire subject-matter of rate. I think the light is not connected with the land, and that the profits arising from it are not part of the profits of the land or house in which the light is situate. The light is seen at a distance, and may or may not confer a benefit on those who see it; it is not the produce of, but is collateral to the land. The light is not any part of the freehold. It is an accidental circumstance that it is placed on the freehold; it might be placed on a moveable frame so as to be easily displaced, or it might be suspended at the end of a pole. The owner of the lighthouse places the light at the top of a house for his own benefit, for it might otherwise be liable to many accidents from the fluctuation of the wind. In all the cases which have been cited as analogous to this, the profit arising from the thing which formed the subject of the rate, not only was within the parish or township, but there was also within the parish an *actual* use of the thing which was the subject of the rate, and some person there had a certain occupation of the thing. In the case of a canal, the owner of the goods makes use of the canal which is rateable as land, the party paying the tolls has actually the use of the property itself, which is the subject of the rate. So in the case of a bridge, the thing which

produces the tolls is used. So as to the tolls of a market, the tolls arise by persons bringing their goods into the market, and the profit arises within the district. So in the case of a soke-mill, a party takes his own corn to be ground at the place, and he has within the parish the use of the thing which is the subject of the rate. To make tolls rateable there must not only be a profit produced within the parish, but it must also arise from the use of the thing, and in respect of it. Here the ships have not that sort of use, but they have merely a transient view of the light as they pass. They do not come within a lighthouse as they do within a dock; in that case they have the actual use and occupation of the dock. They not only do not come near the thing itself, which is the subject of profit, but they do not come within the parish. This is distinguishable from all the other cases where the tolls themselves have arisen in respect not only of what was produced in the parish, but from the actual use of the thing which was the subject of the rate. That being so, I am of opinion that this rate in its full extent cannot be supported. It must, therefore, be amended. — Rule to be amended by striking out the sum of 2250*l.*, at which the defendant was assessed, and inserting 4*l.*

Where the owner and occupier of an iron-stone mine erected an engine for the purpose of drawing the water from the mine, and used it for no other purpose: Held, that he was not rateable to the poor in respect of the engine.

255. *Rex v. Bilston*, T. T. 7 G. 4. 5 B. & C. 851. — Upon an appeal against a rate whereby a mine-engine and engine-pit were rated to the relief of the poor of the township of *Bilston*, in the county of *Stafford*; the Sessions amended the rate by striking out the item objected to, subject to the opinion of this Court upon the following case: The engine and pit were erected, and sunk and used by the appellants solely, for the purpose of drawing water from iron-stone mines in their occupation. Nothing was raised from those mines except iron-stone. — BAYLEY J. I am of opinion that the Court of Quarter Sessions came to a right conclusion. This appears to me a very plain case. The carding-engine and weighing-machine were each considered as part and parcel of a building, and were rated as such. So also in the case of a canteen, the privilege of selling liquors was considered as annexed to the house, and as forming part of its value. Here a person working in a mine in his own land has erected an engine for the purpose of working that mine, and which is of no other use. The occupier of the mine as such is not rateable under the provisions of the 43 *Eliz. c. 2*. In many such mines there are rail-roads under ground, which greatly enhance the value of the mine, and therefore of the land, but they cannot be rated, and in principle they are on the same footing as this engine. This is a mode of drawing the water from the mine; the rail-road is to facilitate the conveyance of the ore to the foot of the shaft. Each is of use in carrying on the mining operations, but of no other use. Suppose a conveyance or lease of this mine with the machinery had been made, it is clear that the engine would have passed to the grantee or lessee; it must therefore be considered as part and parcel of the mine, and is, as well as the mine itself, exempt from poor-rates. — HOLROYD J. I likewise think it clear that the Sessions were right. The engine was not profitable, but burthensome, except as it respected the mine itself. As it regarded the land, independently of the mine, it was clearly burthensome. Now the profits arising from the mine are exempt from taxation under the 43 *Eliz. c. 2*. The engine is, therefore, in like manner exempt. — LITLEDALE J. concurred. — Order of Sessions confirmed.

VIII. *Of levying and distraining for Poor's Rate.*

See stats. 43 *Eliz.* c. 2. § 4. 8. 16 *G. 2.* c. 18. § 1. 17 *G. 2.* c. 38. § 7. 11, 12. 27 *G. 2.* c. 20. 28 *G. 3.* c. 49. § 1, 2, 3. 33 *G. 3.* c. 55. § 3. 41 *G. 3.* c. 23. § 1, 2, 3. 7, 8. 1 & 2 *G. 4.* c. 63. 3 *G. 4.* c. 23.

256. *Edgecomb v. Sparks*, *T. T.* 32 *Car.* 2. 2 *Show.* 126. — The plaintiff being a cooper, brought trespass in the sheriff's court against the defendant, being a constable, *quare domum fregit et intravit*, and divers goods, viz. &c. did take and carry away. Upon not guilty pleaded, the evidence was, that the plaintiff conceiving himself aggrieved by a rate to the poor of the parish where he inhabited, refused its payment; whereupon the overseers, with a constable, by a justice's warrant made a distress, and thereupon took the tools in his shop. — *SHOWER*, for the plaintiff, urged that they were not distrainable, being the utensils of his trade, and consequently the instruments of his livelihood, and so within the rule of the common law, he having other goods at that time in his house sufficient to have answered the distress. — But the *RECORDER* overruled the objection, being of opinion that that rule held not in cases where distress is given by act of parliament, as for poor's rates, hearth-money, and the like; and that it only extends to distresses for rents and amerciaments; *quære tamen* for that matter. (a)

Working tools in a shop may be distrained for a poor's rate.

See *Gorton v. Falkenor*, 4 *T. R.* 505.

257. *East India Company v. Skinner*, *T. T.* 7 *W. 3.* *MSS.* — *TRESPASS.* The defendants being collectors of the King's tax, pleaded the general issue; and upon evidence it was objected, that they had distrained money, which was not distrainable; and that this warrant was granted before any default, which ought not to be, no more than a warrant to distrain for poor's rates before demand made. — *HOLT C. J.* said, that strictly it was so; but that the practice having been otherwise, *communis error facit jus*. And he said it was clear they might distrain money as well as goods; and though they took more than was due, yet it sufficeth that they return the overplus.

Money may be distrained for the poor's rate, as well as goods. *S. C. Comb.* 342.

258. *Hampton v. Lammis*, 10 *W. 3.* *Ld. Raym.* 735. — Justices of peace made a warrant to levy a poor's rate of *J. S.* which was directed to the constables of the parish of *A*. *J. S.* had land in *A*, upon which he had no chattels; but his house in which he had goods, stood in the adjoining parish of *B*, in the same county; the constables of *A* levied these goods, by virtue of the said warrant, and *Holt C. J.* ruled upon evidence at the Assizes at *Hertford*, that the goods were well levied.

Warrant directed to the constable of *A* to levy a poor's rate of *S.* whose house stood in *B*.

Ld. Raym. 545. 746. — See now 17 *G. 2.* c. 38. § 7. and 33 *G. 3.* c. 55.

(a) *TRESPASS* on a distress for rent. It appeared in evidence, that the defendants had entered the house of the plaintiff early in the morning, and had seized, among other things, the daily wearing apparel of his wife and children while they were in bed. It was objected, that wearing apparel could not be distrained. But Lord *Kenyon C. J.* said, that this was *verata questio*, and he believed that the rule of the common law, that wearing apparel,

and the tools and implements of a man's trade, could not be distrained, would now be held otherwise; for that since the statute 2 *Will. & Mary*, c. 5. had given the distrainer power to sell, the reason of the common law, which depended on the goods taken being considered in the nature of a pledge, and incapable of being used or laboured for the benefit of the commonwealth, had vanished. *Bissert v. Caldwell* and *Taylor*, *Sit. at West.* after *H. T.* 31 *G. 3.*

What kind of warrant shall be issued to levy a poor's rate.

A poor's rate cannot be distrained for before it is demanded.

(a) *Ante*, pl. 257.

A *mandamus* lies to compel justices to sign a warrant of distress, although it had been customary to issue *summons* first.

This case is taken from Forster's MSS. vol. 3. p. 371.

(b) See Stevens v. Evans, *post*, pl. 265.

(c) See *Rex v. Benn*, *post*, pl. 269. and *Harper v. Carr*, *post*, pl. 271.

Parish officers levying a poor-rate under a warrant of distress may retain

259. *Tracy v. Talbot*, T. T. 3 Ann. 2 Salk. 531. — *T.* took part of a house in the parish of *D.* on the third day of *December*, and was rated as an inhabitant, and was distrained for a *quartler's* rate due the *Christmas* following: but the distress was taken on a general warrant for the whole year; and in replevin upon evidence, it was ruled by *Holt* C. J. that it could not be distrained upon by virtue of a general warrant made before the rate, but there ought to be a special warrant.

260. NOTE; It was said, that a warrant to distrain for a poor's rate ought not to be granted before demand made; for the first ought to be only a confirmation of the assessment for the poor; and then upon refusal, &c. a new warrant is to be made to distrain, &c. And *Holt* J. C. said, that strictly it was so; but that the practice in these cases having been to grant such a conditional warrant to distrain, *communis error facit jus*, as in the case of *The East India Company v. Skinner*. (a)

261. *Charlwood v. Best*, 1748, MSS. — It was held, that a warrant may be made to distrain before the time for which the rate is made is expired.

262. *Rex v. Justices of Middlesex* (b), E. T. 19 G. 2. — A motion was made for a *mandamus* to the justices of *Middlesex*, to sign a warrant of distress for levying a poor's rate upon persons refusing to pay the same. Upon showing cause, it was stated in the affidavit to have been the custom not to grant warrants without first summoning the party to show cause, and that they had refused to grant any warrants of distress, without first summoning the party. — LEE C. J. A writ of *mandamus* will not give the justices any power they had not before, and therefore it is to be considered what power the statute 43 *Eliz. c. 2. § 4.* gives them; and in that there is no direction, that the party shall be summoned, to show cause. Nothing appears upon the affidavits that this is such a rate as a distress ought not to be granted upon; but the whole is, that persons applying for the warrant did first refuse to take out a summons, which to me does not appear a sufficient cause why the *mandamus* should not go: if the justices have sufficient reason why they did not grant the warrant, it will appear upon the return of the *mandamus*. (c) — WRIGHT J. No doubt the Court will grant a *mandamus* to the justices to do what by act of parliament they ought to do. If we grant a *mandamus*, it is determining the question, that the justices should grant a warrant of distress without summoning the party, though the act of parliament does not require it in express words. — DENISON J. It is sworn by the affidavits, that it is the custom of the parish to grant a summons first. The only question here is, Whether this is a sufficient cause for the Court not to grant a *mandamus*? which I think it is not by any means; and if the justices think this is a sufficient cause, they may show it upon the return. — FOSTER J. I think, for the same reason, that if the Court grant a *mandamus* to sign and allow a rate, they ought to grant it to sign a warrant of distress, which is to make an effectual rate. — The *mandamus* was granted.

263. *Moyse v. Cocksedge*, H. T. 22 G. 2. *Willes*, 636. — Trespass for breaking and entering the plaintiff's house and taking the plaintiff's goods. Plea not guilty. On the trial a verdict was taken for the plaintiff with 1s. damages, subject to the opinion of

the Court on a case reserved. The plaintiff, the occupier of an house, was rated 5s. 3d. in the poor-rate, and on her refusal to pay, a warrant of distress was granted by two justices to the defendants, overseers, to levy of the plaintiff's goods; under which the defendants distrained the goods in question, kept them five days, then caused them to be duly appraised by a sworn appraiser, and sold them for 10s., that being the best price that could be got for them. The defendants paid the appraiser 1s. for his trouble in viewing and appraising the goods; and afterwards tendered to the plaintiff 9s. 9d., part of the 10s., which she refused to accept; insisting that she ought to have 4s. 9d., 5s. 3d. only having being applied towards the poor-rate. The questions were, 1st. Whether the defendants ought to have tendered the plaintiff 4s. 9d. as the overplus? and, 2dly. If they ought, whether *this action* were maintainable? — THE COURT were clearly of opinion, 1st. That the 1s. for the costs might be legally and reasonably detained by the overseers, the sum not appearing oppressive or extravagant. That a distress under the statute 43 *Eliz.* was to be considered not as a distress at common law, which is a pledge and deposit, but as it was saleable, that it was in the nature of an execution, and that the necessary expences were incidental. That statutes made in favour of charity ought to have a benign and large interpretation, *Yelo*. 176. Nay, that the statute 43 *Eliz.* gave power to imprison even for a penny; and who is to be at the expence? That it would be absurd that a parishioner who refused to pay 6d., should put the parish to the expence of 40s. to levy it. 2dly. That in this case the action was misconceived; for here was no irregularity committed according to stat. 17 G. 2. c. 38.; no misfeazance. And a bare nonfeazance will not make a man a trespasser. That that statute was made in favour of officers; and if the plaintiff had any right to the 1s., it must be in the nature of a debt, for which assumpsit will lie and not trespass. *The Six Carpenters' case*, 8 Co. 146. is material. A sheriff, who levies money on a just execution and does not pay it over, is no trespasser, 1 *Ld. Raym.* 188. — Judgment for the defendants *PER TOTAM CURIAM*.

of the goods sold the necessary expences of the distress and sale. *Barnes*, 459. S. C.

264. *Hutchin v. Chambers*, E. T. 31 G. 2. 1 *Burr.* 579. — A special case in trespass for executing a warrant of distress upon a poor-rate amounting to 13l. 2s. The distress at first taken was five geldings, stated to be beasts of the plough and cart, with their halters; which first distress not being found sufficient, they distrained a second time under the same warrant, and took three other geldings, which were stated to be also beasts of the plough and cart, of the value of 36l. 17s. with their halters. It was expressly stated, "that upon the former distress there were other goods, &c. more than sufficient to answer the value of the demand, besides those beasts of the plough." — LORD MANSFIELD delivered the opinion of the Court. THE FIRST QUESTION IS, Whether *averia caruæ* may be taken for a distress upon the poor's rate, where there are other distrainable goods sufficient? As to this, the solid distinction is, that the seizing under the 43 *Eliz.* c. 2., and such like acts of parliament, is but partly analogous to the common-law distress, as being replevable, &c., but is much more analogous to the common-law execution, like a *feri facias*, where the surplus after sale shall be returned. In the old common-law

Beasts of the plough are distrainable for the poor's rate under the 43 *Eliz.* c. 2. § 4. although there are other distrainable goods sufficient on the premises. See the other points of this case *infra*.

distresses, which were in nature of *nomine pœne* to compel payment, it would have been absurd to have suffered the implement by which a man gained his livelihood to be holden as a pledge, because that would have been taking from the man the only means he had of being able to pay the debt: but this reason does not hold, where the things distrained may immediately be sold, by way of satisfaction; which though called a distress, yet really is in this respect an execution. In *Vinkensterne v. Ebdon* (a), Holt C. J. says, It is true, a horse cannot be distrained in a smith's shop, &c. but there is no such restriction where the distress is for a personal duty (b): and he observed, that the duty in that case arose out of the goods laden to be exported; so that by their being laden the duty commenced, and the ship became chargeable, and *a fortiori* any part of her. I take the meaning of what he there says of personal duties to be applicable to the case of parliamentary duties, alluded to in *Salkeld* (c), and, consequently, to be agreeable to that case which says it was adjudged, "That this common-law exemption of utensils, tools, instruments of husbandry, &c. from distress, holds only in distresses for rent arrears, amerciaments, &c. but doth not extend to cases where a distress is given in the nature of an execution by any particular statute, as for poor rates:" therefore it is more analogous to an execution than to a distress at common law; and there, in cases of execution, *averia caruæ* may be distrained, although there be other sufficient distress. And on this ground we are all of opinion, that there is no objection to the first distress, from the *averia caruæ* being taken, for that they are distrainable under the 43 *Eliz. c. 2.* and such like acts of parliament. — AS TO THE SECOND DISTRESS: The first question relating to that is, "Whether the second distress can be at all justified, as it was a second distress taken under the same warrant, when enough might have been taken at first, if the distrainor had then thought proper?" Now a man who has an entire duty shall not split the entire sum, and distrain part of it at one time, and for other part of it at another time, and *toties quoties* for several times, for that is great oppression: and that is the case of *Wallis v. Savill* (d), where the second distress was holden unjustifiable, because both distresses were taken for one and the same rent; and it was the lessor's folly that he had not taken a sufficient distress at first. But if a man seize for the whole sum that is due to him, and only mistake the value of the goods seized, which may be very uncertain, or of even imaginary value, as pictures, jewels, race-horses, &c. there is no reason why he should not afterwards complete his execution, by making a further seizure; and how can the officer who seizes judge of the real, or perhaps imaginary value of the horses or goods seized? The value of them may be quite unknown to him, or may even depend upon whim and fancy. It is to the advantage of the defendant that this should be so: it is better for him that the officer should be at liberty to seize a second time, in case he make an insufficient seizure the first time, or else it might reduce him to a necessity of taking effects of a very great value at first; for if he is to be precluded from thus making up the deficiencies, he will certainly take care not to take too little at first. Now pictures, horses, jewels, books, and some other such effects, may be of so uncertain and even imaginary or fancied value, that it may be exceedingly uncertain how much money they may

(a) 3 Ld. Raym. 386.

See also Co. Lit. 47. a. 3 Bl. Com. 8 Burr. 1498.

(b) Vide 1 Burr. 588.

(c) 3 Salk. 136.

A second distress for a poor's rate may be taken under the same warrant, although enough might have been taken on the first distress. Co. Lit. 272. Cro. Eliz. 13. 8 Co. 50. (d) Lutw. 1532.

produce upon sale (a): and if he do not take the value of the whole at first, (out of tenderness and moderation, perhaps,) there is no reason why he should not complete it by a second seizure, provided it be the same sum due: therefore this first objection to the second distress fails. — **THIRD QUESTION:** The second objection to this second distress is the third remaining question, viz. “its being excessive, and as such being a sufficient ground for an action of trespass.” Now, as to this third question, Whether the taking an excessive distress is a sufficient ground to maintain an action of trespass? Several authorities have been cited to show, that an action of trespass will not lie for taking an excessive distress; but that it ought to be a particular action grounded upon the statute; and particularly one case, *Lynne v. Moody* (b), in the King’s Bench, where it had been so adjudged in the Common Pleas; but the judgment in the Common Pleas was there reversed; so that it has been sufficiently established, that a general action of trespass cannot be maintained for taking an excessive distress. One case indeed was cited to the contrary, which was the case of *Moir v. Munday* (c), and that was an action of trespass, where six ounces of gold and a hundred ounces of silver were taken for six shillings and eight pence, which was holden to be an excessive distress; and judgment was given for the plaintiff: but that appeared upon the face of it, and upon the pleadings, to be excessive, and so the Court expressly declared; and it was a distress of gold and silver, which are of a certain known value, and even the measure of the value of other things. But it was there holden, that in all other cases of goods, or other things, of arbitrary and uncertain value, it must be an action upon the statute. And this, as I am told, was the distinction there taken, and that is therefore an exception, and was there considered as being so, from the general rule, and serves to confirm the rule itself. We are, therefore, all of us of opinion, that there is no cause of action maintainable by the plaintiff in the present case.

265. *Stevens v. Evans*, E. T. 1 G. 3. 2 Burr. 1152. — In April 1759, an assessment was made and published for the poor’s tax, in which *W. V.* was assessed. In July following he died intestate, and in the December following administration was granted to the plaintiff. In January 1760, two justices issued a warrant reciting the assessment: and whereas it appeared that the said 9*l.* 15*s.* had been lawfully demanded of *W. V.* deceased, and of his widow and representative since his decease, who have refused, and doth refuse to pay the same, it requires the churchwardens, &c. to distrain the goods and chattels of the late *W. V.* By virtue of this warrant the defendants, on the 19th of January 1760, distrained cattle which were the property of *W. V.* in his life-time, and at his death, and on the lands occupied by him. The question was, Whether distraining the cattle of *W. V.* in the hands of his administrator, by virtue of the said warrant, was legal? — **WILMOT J.** have not the least doubt but that the representative ought to have been convened before the justices, and asked, why he would not pay the rate assessed upon *V.* his intestate? This is to a *scire facias* upon a judgment, upon which execution cannot be sued out against the representatives without asking them why they should not be taken out. At the time of the *teste*, they were not the representatives of the representative. If the *teste* had been prior to

(a) Raym. 232.
2 Lev. 96.

A general action of trespass cannot be maintained for taking an excessive distress for the poor’s rate; it ought to be a special action grounded on the statute of *Marlebridge*, c. 4. Fitzgib. 85. 3 Lev. 48. Co. Lit. 107. 1 Roll. Ab. 674.

(b) 2 Str. 851.

(c) Say. Rep. 181.

Personal representatives ought to be summoned before distrained upon.
S. C. 1 Bl. Rep. 284.

the death, they would have been the chattels of the deceased. If the money had been demanded of the representative, I should have had great doubt whether this distress was not good. For though the rate is a charge upon the person, yet it is so in respect of the thing occupied; and though he is called an offender if he refuse to pay it, yet he can be no otherwise considered as an offender than every other debtor who refuses or neglects to pay his debts, and thereby renders his person and goods liable to be taken in execution, is so far treated as an offender, till he shall comply with the judgment awarded. And I know that these payments by administrators are very often allowed to go in discharge of the assets of the intestate. In a case of *Wallis administrator v. Hewit*, at the sittings in *Guildhall*, 5 G. 1. before Lord Chief Justice *Eyre*, two aldermen of *London* had made a warrant to distrain for a poor's rate. The man died intestate, but a demand had been made upon him before the warrant was granted. THE CHIEF JUSTICE held, that a distress could not be made after his death, or that if it could, his representative ought to have been summoned, and he held the property to be changed. To distrain a man's goods without hearing him, would make strange confusion in the administration of assets: he may have retained or paid judgment debts prior to this distress for the rate. I have no doubt but the plaintiff here is entitled to his judgment; in which MR. JUSTICE DENISON concurred.

A distress for a poor's rate for lands not in the occupation of the plaintiff, may be replevied notwithstanding the Sessions have confirmed the rate; because determining that a man may be assessed for what he does not occupy, is an excess of jurisdiction.

266. *Milward v. Caffin*, M. T. 20 G. 3. 2 BL. Rep. 1390. — Replevin. Special case: The plaintiff being owner and occupier of certain tenements in *W.*, was on the 3d of May 1777 rated to the poor's rate thus: "*T. M.*, or the occupier for *Tillgate, Tillgate Mills, and Tillgate Ponds*: rent 84*l.* collection 25*l.* 4*s.* 6*d.* Against this rate he appealed, because, *inter alia*, he was assessed for warren and land in the possession of *R. P.*, *W. N.*, and others who ought to have been put in as occupiers. The Sessions dismissed the appeal, and confirmed the rate. On the 27th of December 1777, another poor's rate was made, wherein *M.* was rated "for part of *Tillgate, Tillgate Ponds, and Mill*: rent 20*l.* 1*s.* 6*d.* collection 6*l.* 4*s.* 6*d.*" Against this rate he also appealed to the next *Midsummer* Sessions, but afterwards abandoned his appeal. *M.* paid neither of these rates; whereupon a distress warrant was granted against him on the 22d of July 1778, by two justices of the peace, as inhabitant and occupier of *Tillgate, Tillgate Mills, and Tillgate Ponds*, for the sum of 31*l.* 8*s.* 6*d.* due for several rates and assessments; in pursuance of which the defendant distrained eight oxen, which the plaintiff replevied, and last term declared in replevin. The defendant pleaded the general issue, and also justified under 43 *Eliz. c. 2.* and 17 *G. 2. c. 38.* as overseer of the poor. On the trial of this cause it appeared, among other things that at the time of making the first rate, a part of the estate in which the plaintiff was rated was let to *Potter, Nicholas*, and others, but that fact was unknown to the churchwardens and overseers; and that the plaintiff had paid the rate for other land which he rented in the parish. The question was, Whether the plaintiff was entitled to recover? — GOULD J. It is fairly and candidly conceded, that if one of the rates be illegal, the whole warrant is bad. And I take the first to be illegal, for assessing the plaintiff beyond the extent of his occupation. Nor is, the

adjudication of the Sessions final in this case, as the justices were not within their jurisdiction. They had certainly jurisdiction to inquire of the equality or otherwise of the rate, the leaving out of proper objects of taxation, and other points of the plaintiff's appeal. But all that related to the assessment of lands not in the occupation of the plaintiff, was *coram non judice*; the justices therein exceeded their jurisdiction, and their determination is a nullity. — BLACKSTONE J. of the same opinion. From comparing the dates of the assessments and appeal, it should seem as if this excess of jurisdiction in the justices at Sessions was not accidental, but wilful. It was on the 27th of December that the second assessment was made, which confessed the mistake of the overseers, and reduced the plaintiff's rate upwards of three fourths of the whole. And on the 15th of January following the Sessions confirmed the first rate, which assessed him for lands to the amount of 63*l.* 5*s.* per annum, which were not in his own possession. — NARES J. of the same opinion. The statutes of 17 G. 2. c. 38. § 7. directs the distress to be made for sums justly due. — *Postea* to the plaintiff.

267. *Rex v. Coxens*, T. T. 20 G. 3. Dougl. 426. — The occupier of a particular house having been rated by name, he was summoned by the defendants, who were two justices of the peace for D., to show cause why he should not pay the rate. On the day for showing cause, the overseers of the poor attended, and also a person who was the grandson of the owner of the house, and who, in the presence of the defendants, tendered the sum assessed to the overseers. The defendants asked him *who* he tendered it for? to which he answered, he tendered it for his grandfather. They then asked him, "Don't you tender it for the occupier?" To this he answered, "No; I tender it for my grandfather." The defendants then asked the overseers if they would take the money? which they refused to do; and thereupon the defendants immediately granted warrant (a) to distrain on the goods of the occupier. By the lease, the landlord had expressly stipulated to pay the poor-rate. This was an application for an information against the defendants, and by the affidavits on the part of the prosecution, it was sworn, that they had acted (according to the belief of the prosecutor) from corrupt and criminal motives, and to serve election purposes. This was positively denied by the defendants, but their affidavit did not go on to state their reasons for granting the warrant. — LORD MANSFIELD. No justice of peace ought to suffer for ignorance, where the heart is right. (b) On the other hand, when the magistrates act from undue, corrupt, or indirect motives, they are always punished by this Court. It is impossible for these defendants to excuse themselves upon the ground of ignorance. In many parts of the kingdom the landlord pays the poor-rate for his tenants; and it is sworn, that the landlord in question had actually paid 28 rates before this, without any objection or difficulty being raised. What possible reason could there be for raising one now, for the first time? The justices must have acted with a view to make a point to serve the purpose of an election. — THE COURT proposed, that, upon the defendants undertaking to pay the whole costs out of pocket incurred by the application, the rule should be discharged; which was accordingly done.

If landlord tender the poor's rate for his tenant, the overseers must receive it, and a warrant ought not to be granted to distrain upon the tenant.

(a) 49 Eliz. c. 2: § 4.

(b) Even where he acts illegally. *Rex v. Palmer*, E. T. 1 G. 3.

If a poor-rate be not published in the church on *Sunday next* after it is allowed, it is a nullity, and payment under it cannot be enforced though there be no appeal to the Sessions.

266. *Rex v. Newcomb*, T. T. 31 G. 3. 4 T. R. 368. — A rule having been obtained, calling on the defendants to show cause why a *mandamus* should not issue to compel them to grant a warrant of distress on D. S. to levy a poor-rate, cause was now shown that as the rate was not published till the third *Sunday* after it was made, it was a nullity; for it is enacted by the 17 G. 2. c. 3. § 1. that public notice shall be given of every rate the *next Sunday* after it shall have been allowed by the justices, "and" that no rate shall be esteemed valid and sufficient, so as to "collect and raise the same, unless such notice shall have been" given." And notwithstanding there was an appeal to the Sessions against this rate on the ground of inequality, where the appeal was dismissed, the order of Sessions cannot give effect to that rate which was before a nullity. — LORD KENYON C. J. There is no doubt but that in a proper case this Court would grant a *mandamus* to compel the justices to grant a warrant of distress, because without it payment of the rate could not be enforced. But as the *mandamus* would be no justification to the magistrates, we must take care not to compel them to do an act which may not be warranted by law. Now this application is answered by the act of parliament, which requires a particular step to be taken, before the rate can be valid, namely, that public notice shall be given of the rate in the church on the *next Sunday* after it is allowed; that direction was not pursued in this case, and, consequently, the rate itself is invalid. Supposing the parish officers were to give notice of the rate at some other public place in the parish, it would not be sufficient, though it might be equally notorious. What is said in *Hutchins v. Chambers* (a) is perfectly right, as applied to the inequality of the rate. But this is a radical defect in the rate itself, which nothing can cure. — BULLER and GROSE Js. concurring. — Rule discharged. (b)

(a) *Ante*, pl. 264.

Before a warrant of distress can issue to levy a poor-rate, the party must be summoned and heard.

(c) *Ante*, pl. 262.

269. *Rex v. Benn*, H. T. 35 G. 3. 6 T. R. 198. — LAW showed cause against a rule for a *mandamus* to the defendants, to grant warrants of distress to levy several sums of money on different persons who had refused to pay a poor-rate. The answer given to the application was, that there should have been a previous summons by the magistrates to the respective persons, charged with having refused to pay the assessment; which had not been issued in this case. — BEARCROFT, in support of the rule, relied on the case of *Rex v. The Justices of Middlesex* (c), where a *mandamus* was granted, notwithstanding this very objection was taken. — LORD KENYON C. J. I confess I cannot subscribe my assent to the decision in the case cited. The payment of a poor-rate, unless it be set aside, must be enforced; and if the magistrates will not issue a summons to the person who refuses to pay the rate, this Court will grant a *mandamus* to compel them to do it: but a summons must precede a warrant of distress, which is in the nature of an execution. On the summons, the party may show a sufficient reason to the magistrates why a warrant of distress should not issue; as for instance, that he has already paid the assessment to one of the parish officers who has not accounted for it. But it is an invariable maxim in our law that no man shall be punished before he has had an opportunity of being heard: whereas if a warrant of distress

(b) Vide *Milward v. Caffin*, *ante*, pl. 266.

were to be issued without any previous summons, the party would have no opportunity of showing cause why the execution should not issue against him. — Rule discharged. — BEARCROFT on the next day made another motion for a similar *mandamus* in the first instance, on the authority of many precedents (furnished by the Crown-Office) of similar writs, which neither stated the parties to have been summoned, nor required the justices to summon them; and he observed, that if any case could be shown, it might be returned on the writ. — But THE COURT only granted a rule for a *mandamus* to the magistrates “to receive such informations and complaints as have been or shall be duly laid before them against such persons as have neglected or refused, or shall neglect or refuse, to pay the sums respectively assessed on them by a certain rate or assessment, made on the 22d day of April last, for the relief of the poor of the township of *Whitehaven* in the county of *Cumberland*, and to proceed thereupon to levy the said several sums.”

270. *Durrant v. Boys*, H. T. 36 G.3. 6 T. R. 580. — Trespass. General issue, and a verdict for the plaintiff on a case which stated, That the plaintiff is the occupier of a farm in S.; that the defendant *Boys* is an acting justice of the peace, and the defendant *Burgis* one of the overseers of S.; “that it has been usual in S. to make two assessments in a year for the relief of the poor, viz. one soon after *Easter* and the other soon after *Michaelmas*, although in some years a third assessment has been made; that the rate in question was made on the 2d October 1794; and though it does not purport to have been for any particular time, was, in truth, intended by the overseers, and understood by the justices, to have been intended for six months prospectively;” that the plaintiff not having paid this rate, *Boys* and another magistrate granted a warrant of distress against the plaintiff, and *Burgis* executed it; and that the plaintiff never appealed against this rate. — LORD KENYON. C. J. The short answer to this action is furnished by the case of *Hutchins v. Chambers* (a), where Lord Mansfield, after the first argument, said, “all about the rates is clearly out of the present case; for if they are bad, the parties who thought themselves aggrieved should have appealed.” This authority, which has convenience as well as reason and law for its foundation, is directly in point. Therefore, if it had appeared on this rate that it was made for six months, and if the plaintiff wished to object to it on that account, of the validity of which objection I will say nothing, he ought to have appealed against it to the Sessions. The legislature seem to have been anxious that preliminary objections to a rate should be made in the first instance: the statute 17 G.2. c.28. directs that poor-rates shall be published in the church the next Sunday after they are allowed; and any persons objecting to the rates must appeal to the next Sessions; there the question is decided in a *forum domesticum*, and in many instances before the rates are collected. Therefore, on the authority of that case, I am clearly of opinion that the plaintiff should have objected to this rate (if he thought it objectionable) by appealing to the Quarter Sessions, and having waived making his objection there, it is not competent to him to make it in this action. And the rest of the Court were of the same opinion.

The overseers cannot be guilty of trespass in levying a poor-rate by distress, although the rate is objectionable, if the party has not appealed to the Sessions.

(a) See this part of the case. 1 Burr. Rep. 579.

For the granting a warrant to levy a poor-rate is a judicial, and not a ministerial act in the justices.

271. *Harper v. Carr*, E. T. 37 G. 3. 7 T. R. 270. — Trespass. The defendant, as churchwarden, took the anchor in question as a distress for non-payment of a poor-rate under a warrant of magistrates. It was contended that the magistrates who granted the warrant ought also to have been defendants, but the judge thought otherwise, and the jury found a verdict for the plaintiff, with leave to move a nonsuit. It was contended that there was no distinction in this respect between a churchwarden acting under the warrant of magistrates in distraining for a poor-rate or under an order of removal. In all cases he is in the situation of any other officer on whom a duty is thrown by law which he is bound to execute. He is not, therefore, in the situation of a party acting in his own cause; nor are the justices bound to grant the warrant of distress merely on their application: it is their duty to summon the party first, and hear what he has to say against it; and they must first satisfy themselves that the rate has been regularly made and published, and a proper demand made upon the party. The Court lately refused to grant a *mandamus* to the justices in *Cumberland* (a) to issue a warrant of distress before they had summoned the party and heard what he had to object. — On the other side the counsel contended, that it was no answer to say that they may and ought to summon the party before they grant a warrant of distress against him; for in this instance they act ministerially; and the party may afterwards discover objections to the rate of which he was not apprized at the time: but the overseers must know whether they have made a legal rate or not, and it is their own fault if they have not. In *Rex v. The Justices of Middlesex* (b) the Court granted a *mandamus* to justices to sign a warrant of distress for levying a poor-rate, although it was urged that it had been usual to grant a summons first, which the Court thought not necessary, it not being required by the act. And Mr. Justice Foster put it on the same footing as the allowance of a rate, which is admitted to be an act merely ministerial. So in a late case of *Rex v. The Justices of Gloucester* (c), upon a *mandamus* to grant a warrant of distress, the magistrates thinking that they had a discretion, returned that they were of opinion that the place in respect of which the party was rated was not within their jurisdiction; but the Court quashed the return as insufficient, and finally an issue was directed. The poor's rate being the act of the overseers, greatly distinguishes their case from that of constables, or such other officers, who are mere instruments in executing the warrants of magistrates on other occasions, and who have no discretion to judge of the propriety of the application on which the warrant issued, and cannot refuse to execute it. Whereas an overseer has both the opportunity of forming such judgment in the first instance, and is not afterward bound to execute the warrant if he is satisfied of the illegality of it: he is throughout the principal mover in the business. — *Lord Kenyon C. J.* I will not now enter into an examination of the case of *Milward v. Caffin* (d), because that was decided on the form of the action, a replevin, to which it was ruled that this statute did not extend: had it not been for that decision I should have

(a) *Rex v. Benn*, ante, pl. 269.

(b) *Ante*, pl. 262.

(d) *Ante*, pl. 266.

(c) The *mandamus* issued in *Hilary Term 1791*; and the justices made a return in *Easter Term* following, stating that it appeared to them that the lands rated did not lie within that part of the parish of *St. Nicholas* which was in the county of *Gloucester*.

thought that the act did extend to a replevin: and certainly convenience requires that it should, otherwise it is in the plaintiff's power to evade the provisions of the act by adopting a particular mode of proceeding which depends on his own choice. Perhaps, however, it may be shown on examination that that case was rightly decided, whatever my doubts may have been about it. Then it was said that justices of the peace act ministerially in granting a warrant of distress for non-payment of a poor-rate in the same manner as when they allow a rate, and a *dictum* of Mr. Justice Foster has been alluded to in support of it: but it is observable that neither of the other three judges thought the two cases alike; and I think that the case of allowing a poor-rate is the single instance in which the justices act ministerially; but there the allowance alone does not put the rate into a state to be enforced, for it is still open to an appeal by any person who thinks himself aggrieved. But in the instance of granting a warrant of distress the justices exercise a discretion after inquiring into the circumstances of the case. It is an essential rule in the administration of justice that no man shall be punished without being heard in his defence: the party must be summoned before a warrant of distress is granted, as we decided in *Rex v. Benn* (a); and

(a) *Ante*, pl. 269.

that summons many circumstances may appear to show that a warrant of distress ought not to be granted. — LAWRENCE J. The ground on which I doubted the authority of *Nutting v. Jackson* (b) when this motion was first made was, that the magistrates in granting a warrant of distress act merely ministerially; if they had no discretion on the subject it would be hard that they should be bound to grant a warrant of distress which they thought illegal, and afterwards discuss the propriety of the rate at their own expense. And if they had no discretion in granting the warrant, I should have doubted of that case. But the cases now referred to, show that the justices do not act ministerially. Besides the statute 43 *Eliz. c. 2.* requires a warrant signed by two justices to enable them to levy the money due, which would have been unnecessary if the justices were not to exercise a discretion whether they should grant or refuse the warrant: that circumstance, I think, shows that the legislature did not intend that a warrant should be granted as a matter of course, but that the justices should first inquire into the merits of the case. The cases cited show that the party ought to be summoned before the magistrates before they grant a warrant of distress; and then they must exercise their own judgment in the same way that they do on the hearing of any other complaint. Then it seems to be immaterial in this respect whether the warrant be granted to the overseer or to any other person. Considering, therefore, that such a warrant is not granted as of course, and that this very point was decided in *Nutting v. Jackson*, I think that the rule must be made absolute. — Rule absolute.

(b) *Post*, pl. 361.

722. *Lane v. Cobham*, M. T. 46 G. 3. 7 East, 1. — In trespass for taking and converting the plaintiff's goods. It appeared that the action was brought to try the validity of a poor-rate against the two justices who granted the warrant of distress under which the plaintiff's goods were taken, and one of the parish officers of W., in the counties of *Wilts* and *Berks*, who procured and executed such warrant; and the question was, Whether the rate.

Though a parish had at no time antecedent to the years 1773-5 had the benefit of the statute 43 *Eliz. c. 2.* but had always

had five overseers of the poor appointed separately, two for one district, two for another, and one for a third; yet two of the districts having agreed in 1773 to act together, to which the third acceded in 1775, and there having been but four overseers since that period who had been appointed for the whole parish, the Court held that such agreement at the time, acted upon for 30 years past, was proper evidence for the jury to decide that the parish could, in fact, enjoy the benefit of the statute 48 Eliz.: and, consequently, that a distress levied for a poor-rate made by the overseers conjointly appointed for the whole parish was legal.

(a) The parish was proved at the trial to be five miles long, three broad, and 18 in circumference.

in dispute, made by four overseers appointed for the whole parish, were good; or whether there ought not to have been three several rates for so many distinct divisions of the parish made by separate respective overseers of the poor of each division? At the trial it was proved, that from all antecedent time down to the year 1773, the parish at large of *W.* had been, in fact, divided into three districts, each of which had maintained their own poor separately; one consisting of the corporate town of *W.*, which lay for the most part in the county of *Berks*, with a small part in the county of *Wilts*; the second consisting of the remaining part of the parish which lay in the county of *Berks*; the third called the *Wiltshire* liberty, lying in *Wilts* (a): that during that time there had always been separate overseers of the poor for each part, two for the town, and two for the *Berkshire* part of *W.*, and one for *Wilts*; separate rates, and separate constables appointed; and there had been removals of paupers and certificates granted from each of the several parts to the others. That in the year 1773, the town of *W.* and the *Berkshire* district agreed to unite, and invited the *Wilts* district to accede to the union, and that the latter came into the agreement in 1775; and that, for the purpose of sanctioning as far as might be such union, a *mandamus* was applied for to the Court of King's Bench, commanding two justices of the peace to appoint four overseers for the whole parish, to which no opposition or return was made; and that from that period down to the present time there had always been four overseers and no more appointed for the whole parish, who had made one rate accordingly, and had in all respects conformed themselves to the stat. 43 Eliz. c. 2. The learned judge was therefore of opinion at the trial, that it was competent to the inhabitants of the parish in the years 1773 and 1775, to come to the agreement which they did, laying no stress on the *mandamus*, which he thought arose out of that agreement, such agreement being in conformity to the general provisions of the stat. 43 Eliz. for the management of the poor, from which the parish had deviated without authority from that period to the passing of the act of the 13 & 14 Car. 2. c. 12. § 21., which first sanctioned such a deviation; but that they were not bound to continue under the direction of the latter statute, if, in point of fact, the parish could avail itself of the provisions of the general antecedent law; the stat. 13 & 14 Car. 2. only applying to such parishes as have not and cannot reap the benefit of the stat. 43 Eliz.; and that in the present case he thought that the uninterrupted usage for the last 30 years went to show that the parish could have, because they had, in fact, had the benefit of the stat. 43 Eliz.; on which ground he directed the jury to find a verdict for the defendants. The jury accordingly found for the defendants under that direction, but found also, as a fact, that prior to the agreement in 1773-5 the three districts had always maintained their poor separately under separate overseers. And the plaintiff had liberty to move the Court to set aside the verdict, and grant a new trial, if the direction given to the jury were wrong in point of law. — THE COURT, however, were clearly of opinion, that the question was proper to be left to the jury, and that it was in their province to decide whether the parish under these circumstances could have the benefit of the stat. 43 Eliz.: and there was no evidence to show that they could not, opposed to the weight of a

usage for 30 years past, to show that they might have, and actually had enjoyed the benefit of it. That the agreement in 1773-5 showed, that in the opinion of the parishioners of that period they might have the benefit of that statute, and it now appeared that, in point of fact they have acted under it ever since. There, therefore, seemed to be no reason for disturbing the practice which had prevailed for so long time, or for scrutinizing every part of the direction, when the learned judge's opinion and the verdict of the jury were substantially right. — Rule refused.

273. *Rex v. Margate Pier Company*, M. T. 60 G. 3. 3 B. & A. 220. — *Mandamus*. The writ stated, that a rate of 1s. 6d. in the pound was duly made on or about the 17th April last, for the relief of the poor of the parish of St. J., in which parish the pier and harbour of Margate are situated: and that such rate was duly published, and that by it the defendants were rated at the sum of 150*l.*, for and in respect of the pier and toll-houses, &c. erected thereon. It further stated an application to the defendants, and a neglect and refusal to pay the rate; and concluded by commanding payment to be made to the overseers. To this writ, the defendants made a special return. When the case came on for argument, MARRYAT, for the defendants, took two objections to the writ; first, that the writ did not state that the defendants had no effects on which a distress could be levied, which was the ordinary remedy, in case of the non-payment of a poor's rate; and, secondly, that no mandamus would lie for the non-payment of a poor's rate. — GURNEX admitted the first objection to be a fatal one, but contended, that it was now too late to be put as an objection; and cited *Rex v. The Mayor of York* (a), in which it was so expressly laid down by Lord Kenyon and Buller J. — ABBOTT C. J. I am of opinion, that it is not too late now to take an objection to the writ. Suppose an action brought for a false return, if the writ be defective, the party bringing the action can never be entitled to judgment. And, besides, in a case like this, where there is no writ of error, the Court will surely at any time before a peremptory mandamus issues, suffer itself to be informed, and examine whether the writ is so framed as to give them jurisdiction. It is undoubtedly more convenient that such an objection should be taken at first, and that will probably account for the observations of Lord Kenyon and Mr. J. Buller in the case cited. But the other authorities, showing that such an objection may at any time be taken, do not seem to have occurred to these learned Judges, when those observations were made. Then, as to the objection itself, it appears to me, that the ground of such an application as the present is, that there is no other remedy, and, therefore, it is clear, that the writ ought to state that fact distinctly; if not, it would deprive the defendants of the power of traversing that most material fact, for they are only to answer what is alleged in the writ. I think, therefore, that this is an objection in substance and not in form, and that we ought to quash the writ. That being so, it becomes unnecessary to pronounce a decision on the point, whether any mandamus will lie in the present case. — Writ of mandamus quashed.

A writ of mandamus to a corporation, commanding them to pay a poor's rate, omitted to state that the defendants had no effects upon which a distress could be levied: Held, that this was a fatal objection to the writ, and might be taken after the return, or at any time before the issuing of the peremptory mandamus. *Quære*, whether, in such a case, a mandamus will lie.

(a) 5 T. R. 74.

274. *Novello v. Toogood*, E. T. 4 G. 4. 1 B. & C. 554. — *Trespass* for breaking and entering the plaintiff's house, and distraining his goods. Plea, not guilty. At the trial before Abbott C. J., a

Where the servant of an ambassador did not reside in

his master's house, but rented and lived in another, part of which he let in lodgings:

Held, that his goods in that house not being necessary for the convenience of the ambassador, were liable to be distrained for poor rates.

verdict was found for plaintiff, subject to the opinion of the Court, upon the following case: The plaintiff, who was a *British-born* subject, from the 5th of *January* to the 5th of *July* 1821, rented and occupied a house in the parish of *St. James, Westminster*, and let part thereof in lodgings. The plaintiff continued in the occupation of the house on the 19th day of *September* 1821. The defendant was collector of the poor-rate for the parish at the time of issuing the warrant, and making the distress hereinafter mentioned. The defendant being such collector, on the 19th day of *September* 1821, entered the plaintiff's house and distrained his goods, under a warrant, regularly signed and sealed by two magistrates. The rate on which the distress was founded was duly made, allowed, and published. The sum distrained for was due, in respect of the said house, for half a year, from the 5th of *January* to the 5th of *July* 1821, and same was regularly demanded from the plaintiff, and payment refused before the distress was made. The plaintiff, for the last twenty-five years, had been in the service of the ambassador from the crown of *Portugal* (to His late Majesty, King *George the Third*, and His present Majesty, King *George the Fourth*), as first chorister in the chapel of his excellency, in *South Audley Street*, which is attached to the house of the ambassador, and as such had received a salary from the ambassador, payable quarterly, but the plaintiff did not live in the ambassador's house. During all that time he had officiated as such chorister in the said chapel twice on all *Sundays* and *saints' days*, and fast days, except on *Wednesdays* in *Lent*, when he had officiated only once, the service being performed only once a day. The *Portuguese* ambassador professes the Roman Catholic religion, and, according to the ritual of that religion, it is necessary, to the due celebration of divine service, that there should be a person to officiate as the plaintiff did during the time in question. The plaintiff was registered with the secretary of state as chorister to his excellency *M. De Souza*, the late minister of the King of *Portugal*, and the said *M. De Souza* was received as such minister at the *English* court. During that time the name of the plaintiff was affixed in the sheriff's office, in the list of persons in the service of foreign ministers. The plaintiff, during the period for which the rate upon him became due, acted as prompter at the *King's Theatre*, in the *Haymarket*, and during the same period, and at the time when the distress was made, also was and acted as a teacher of music and languages, from all which employments he derived pecuniary advantage. His engagement as prompter at the *King's Theatre* was absolute, and contained no exception of the times when he might be engaged as chorister in the chapel of the *Portuguese* ambassador. — *ABBOTT C. J.* This was an action for breaking and entering the plaintiff's house, and seizing and distraining his goods. The defendant's case rested upon a warrant to distrain for the non-payment of poor rates. It is found by the case, that the plaintiff is a *British-born* subject; that he occupied a house, of which he let out a part in lodgings; that he was a teacher of languages, and prompter at the *Opera-house*. My opinion is founded upon one point only, viz. that the action is for taking the plaintiff's goods, and not for arresting his person; as to which, I give no opinion. The question arises upon an act of parliament, framed in very general terms, "That all writs and

"processes, whereby the person of any ambassador, or other public minister of any foreign prince or state, authorised and received as such, or the domestic or domestic servant of any such ambassador or other public minister, may be arrested or imprisoned, or his or their goods or chattels may be distrained, seized, or attached, shall be utterly void." The expression is certainly large, but the act itself was only declaratory and in confirmation of the common law. It must, therefore, be construed according to the common law, of which the law of nations must be deemed a part. Adopting this rule of construction, I am of opinion, that whatever is necessary to the convenience of an ambassador, as connected with his rank, his duties, and his religion, ought to be protected; but that an exemption from the burthens borne by other *British* subjects ought not to be granted, in a case to which the reason of the exemption does not apply. I do not say that the servant must reside in the ambassador's house. I do not say that he may not have a house fit and convenient for his situation as the servant of an ambassador, nor that the furniture in such a house will not be privileged. But the facts of this case are widely different from those which I have mentioned. In this instance, the servant let a part of the house in lodgings. Such a house was not necessary for the personal convenience of the plaintiff; and, therefore, could not be necessary for that of the ambassador, his master. If we should decide that the privilege given by the law of nations extends to such a case as this, every servant of an ambassador might take a large house, for the purpose of letting it out in lodgings, and enjoy an exemption from the payment of taxes. Such a privilege is absurd in itself, and not at all within the reason upon which the rights of ambassadors are founded. I am very sure that it cannot be the wish of any ambassador that his servant should, by colour of those rights, inhabit such a house for such purposes, without contributing to the public taxes of the country where he resides. And I think that there is nothing in the law of nations, or the statute of the 7 Ann. c. 12., which entitles the plaintiff to recover in this action. Judgment of nonsuit must, therefore, be entered. — BAXLEY J. This is not the case of an arrest of the person of an ambassador's servant, nor are the goods seized such as were necessary in a residence of that description which the plaintiff's service to the ambassador required. The plaintiff's counsel claims an unrestrained exemption of all goods, without entering into the question of their being necessary or not. The consequence of such a doctrine would be to enable the servant to abuse that privilege which was intended for the ambassador's convenience and not his own. Notwithstanding our decision in favour of the defendant, the plaintiff will still be able to execute all the necessary functions of his office. For these reasons, I concur in thinking that the plaintiff is not entitled to recover. — HOLROYD J. I am of opinion that the plaintiff is not privileged under the circumstances of this case. It is contended, that, by serving the ambassador, he is entitled to an unqualified exemption of all his goods from seizure for taxes or otherwise. Even supposing him to be a domestic servant, he cannot have a privilege to that extent. The privilege is conferred by the law of nations, in order that the ambassador may not be prejudiced in his dignity or personal comfort; it is not

given for the benefit of the servant. If the debt for which the seizure was made had arisen out of the plaintiff's situation, as servant to an ambassador, the result of this case might have been different. But that was not so, nor can the ambassador be at all prejudiced by that which has been done. The reason of the privilege, then, does not apply in this instance; the plaintiff, therefore, cannot have the benefit of it, and judgment of nonsuit must be pronounced. — Judgment of nonsuit.

The plaintiff's goods were distrained for poor-rates, and upon the sale produced 4*l.* 7*s.* more than was necessary to satisfy the levy. The defendants tendered to him 3*l.* 14*s.*, which he refused to accept, saying that it was too late, but did not then or at any other time demand a settlement of the account and the payment of the overplus: Held, that the 27 G. 2. c. 20. prevented the plaintiff from recovering without making a demand before the commencement of the action, and that the tender did not make such demand unnecessary.

275. *Simpson v. Routh*, E. T. 5 G. 4. 2 B. & C. 632. — Assumpsit for money had and received. Plea, non assumpsit, as to all but 3*l.* 14*s.*, and tender of that sum. Issue thereon. At the trial before Holroyd J., at the last Yorkshire assizes, it appeared, that the defendants had seized and sold certain goods of the plaintiff, under a warrant to distrain for poor-rates. The articles sold produced 4*l.* 7*s.* more than was necessary to satisfy the levy. The overplus was never demanded, but the defendants tendered to the plaintiff the sum of 3*l.* 14*s.*, which he refused to accept, saying that it was too late. That sum was afterwards paid into court. The learned Judge thinking that the action could not be maintained without a previous demand of the overplus, directed a nonsuit, but gave the plaintiff leave to move to enter a verdict for 13*s.* — ABBOTT C. J. However the law might have stood before the passing of the act in question, I am clearly of opinion, that the right of a plaintiff to recover in such an action as the present, is limited to those cases where he has previously made a demand of the surplus. The second section of the act states, "that the officer making the distress shall deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising by the sale; and the overplus (if any) after such charges, and also the said penalty or sum of money, shall be fully satisfied and paid, shall be returned, *on demand*, to the owner of the goods and chattels so distrained." If we were to hold, that an action would lie for the surplus without any demand, we should convert the statute into a snare, by which every parish-officer would be rendered liable to a variety of actions. If it were necessary to pay the money without demand, it would be incumbent on the officer to follow and make a tender to the party distrained upon, in whatever part of the kingdom he might happen to be. In this, as in other cases, where a demand is necessary to give a right of action, the commencement of the action is not of itself a sufficient demand. Neither does the tender supply the place of a demand. A tender and payment of money into court, admit the precise sum tendered or paid in to be due, but the admission does not extend beyond that. For these reasons, I think that the nonsuit was right. — BAYLEY J. I am clearly of opinion, that it was necessary to make a demand before the commencement of the action, and that such a step would have been necessary at common law, without the aid of the statute. There was no contract between the parties. The defendants had a public duty to perform for the parish, and probably could not avoid raising more than the sum mentioned in the warrant, for they could not divide any chattel, and sell a part of it, so as to make up the exact sum. The object of the statute in providing that the overplus should be demanded, was probably to bring the parties together, to make a settlement; and if in this case it had appeared that the plaintiff had demanded a settlement

generally, and the tender had been made upon that, or if the tender had been made in pursuance of any meeting for the purpose of settling the accounts, I am not prepared to say that it would not have superseded the necessity of any other demand; but it does not appear, that when the tender was made, or at any other time, the plaintiff demanded a settlement. I am, therefore, of opinion, that we ought not to grant any rule in this case. — LIT-
TLEDALE J. It appears to me, that the plaintiff in this case could not maintain an action without previously making a demand. It has been said, that the very commencing an action was a demand. That may be sufficient where the money is payable according to any contract between the parties, for there it may be supposed, that at the time of making it, the plaintiff demanded that the money should be paid at a certain time. In such cases, bringing an action cannot properly be called making a demand, but enforcing a prior request to pay the money when due. But in other instances, such as a bond with a penalty to pay a certain sum on demand, there an express demand must be made before the action can be maintained. So in an action on a promise to pay a collateral sum on request, *Birks v. Trippet*. (a) The next question is, Whether the tender admitted a demand? I think, that it admitted nothing more, than that the sum tendered was due. If at that time the plaintiff had said it was insufficient, and had demanded a further account, I am inclined to think that it would have been sufficient. — HOLROYD J. The right of action in this case is founded upon the statute, and that authorises the party levying to retain the surplus until it is demanded. Nor does that impose any hardship, for at common law, if trover had been brought for the goods, a previous demand must have been made. Neither does the tender appear to supply the place of a demand; there must be an express demand, or that which is equivalent to it. The plaintiff said he would not take the sum tendered, because it was too late, not because he claimed a larger sum. A tender admits all the facts in a special count, but if pleaded to a general count, has no effect, but that of admitting that the sum tendered is due. — Rule refused.

(a) 1 *Saund.* 32.

IX. *Of the Appeal and Jurisdiction of the Sessions.*

See stat. 43 *Eliz. c. 2.* § 4. 8. 9 *G. 1. c. 7.* § 3. 5 *G. 2. c. 19.*

17 *G. 2. c. 38.* § 4, 5, 6, 7. 13. 28 *G. 3. c. 49.* 41 *G. 3. c. 23.*

§ 1. 3, 4, 5, 6, 7, 8. 54 *G. 3. c. 170.* § 9. 1 *G. 4. c. 36.*

976. *Garret v. Foot*, T. T. 1 *W. & M. Comb.* 133. — If an order be made by the Sessions directing a new rate, it must appear on the face of the notice that it was on an appeal, as by a recital of the former order, &c. or otherwise the order of Sessions shall be quashed; for the Court refused to supply such defect by affidavit.

277. *Case of the Parish of St. Leonard's, Shoreditch*, M. T. 10 *W. 3. Holt*, 508. — A poor's rate made by the churchwardens, &c. and confirmed by two justices, in which no tax was laid upon personal estates, was, upon the appeal of several inhabitants, quashed at the Sessions. A new rate was made, in which the real estate was taxed ten times more in proportion than the personal, and upon appeal to the Sessions was quashed. Upon motion to quash these orders of Sessions, it was urged, that the Sessions could only relieve particular persons over-rated or aggrieved, but

The order of Sessions directing a new rate must show the appellate jurisdiction.

Sessions may quash a whole rate, and either make a new one themselves, or order the churchwardens, &c. to make one. *8alk.* 472. *Farresley*, 10.

could not set aside a whole rate at once. — *PER CURIAM*: The justices are enabled by the words of the 43 *Eliz. c. 2. § 6.* to take such order as by them shall be thought convenient upon appeals from poor's rates: in either of these cases of the first or second rate, the justices could not have given relief without setting aside the whole rate, because the rate was burthensome to a whole set of men; and they may either make a new rate themselves, or order the churchwardens and overseers to make it.

But the Sessions cannot make an original order respecting a rate. See *S. P. 1 Keb. 685.*

278. *Rex v. Aberford East, M. T. 12 W. 3. 2 Ld. Raym. 798.* — An original order was made at the Sessions, whereof the tenor was thus: "It is ordered, that the churchwardens and overseers of the parish of A. do make an assessment to the church and poor by a pound-rate, and in the said assessment do assess G. F. lands and all other lands within the said constabulary to the use aforesaid, equally by a pound-rate:" and now objection was made to it, that they have not jurisdiction to make such original order at the Quarter Sessions, though it had been otherwise if it had come before them on appeal; and the order was quashed, by the Court, who said, that it was impossible to make it good.

Justices have no authority to make a standing rate, or to confirm an old one.

279. *Rex v. Audley, M. T. 12 W. 3. 2 Salk. 526.* — In the year 1665, a certain rate was agreed to by the inhabitants of A., which had been followed till the 11 *W. 3.*, when a new rate was made, which upon appeal to the Sessions was quashed, and the old rate ordered to continue; and now it was objected, that it did not appear to be a poor's rate, being called a parish levy; which might be as well for the church as the poor, and in that case the justices had no jurisdiction. To this it was answered by counsel, that the Court will intend it. Upon this, *HOLT C. J.* observed, that *Twisden C. J.* used to say, that if a particular jurisdiction does not show the matter to be within their authority, it must be concluded to be out of it. This rate must be quashed, because the justices have no authority to make a standing rate, or to confirm an old rate; by 43 *Eliz. c. 2.* the rate must be equal, to which purpose it must be continually altered, as circumstances alter. Although the justices at Sessions need not give a reason for the order, yet if they give a reason which is a bad reason, we must take notice of it and quash the order, because it appears to us to be no reason.

If justices give a bad reason, the Court must notice it.

In what time the appeal against a poor's rate must be made to the Sessions under the 43 *Eliz. c. 2. § 4.*

280. *Rex v. St. Giles, M. T. 8 Ann. 11 Mod. 259.* — The inhabitants of the parish of *St. G.* appealed to the Sessions upon an order made for the levying a poor's rate, in which some were unequally taxed: upon which the Sessions dismissed the appeal, and showed for cause in the order of dismissal, *That the Court being of opinion, that the appeal should have been to the next Quarter Sessions after the making the rate, and not after the taking the distress, therefore the Court does dismiss the appeal.* This order being removed into the King's Bench, — *HOLT C. J., POWELL, POWIS, and GOULD, Js.* This appeal need not be to the next Quarter Sessions; but the error of the justices is, that they did not proceed upon it when it was before them, and give judgment whether the rate was good or not: though one of the parties may have a particular appeal, yet this being a rate which they think not according to the act, they may appeal together. But it being assigned for a reason, that the appeal was not to the next Quarter Sessions, the Court quashed the order of dismissal.

281. *Rex v. St. Giles*, M. T. 8 Ann. Vin. Abr. tit. Poor, 417.— Upon an appeal from a poor's rate, the justices refused to hear the appeal, because not made at the next Quarter Sessions.—PER CURIAM. The party grieved may appeal at any Sessions; the justices may not have power to alter the rate at their discretion, but they ought not to refuse to hear the appeal.

282. *Rex v. St. Mary, Taunton*, E. T. 12 G. 1. MSS.—The General Quarter Sessions set aside a rate made by justices in a corporation; and it was objected, that by 43 Eliz. c. 2, § 8. a power is given to corporation justices, and that no other justices can enter or meddle with such borough.—PER CURIAM. There being negative words in this clause, the justices at the Quarter Sessions for the county have no jurisdiction, and the order must be quashed.

283. *Rex v. Borough of Taunton*, E. T. 12 G. 1. *Fost.* 325.— A rate was made for the relief of the poor, on which an appeal was made to the Borough Sessions, who confirmed the rate. On the order being removed into the King's Bench, THE COURT held, that the appeal was good; for there is a clause in 43 Eliz. c. 2. that says, the justices and sessions of boroughs shall have power exclusive of the county.

284. *Rex v. Justices of Berkshire (a)*, H. T. 27 G. 2. 3 *Dougl. on Elections*, 132.—It was moved last term to quash two orders made at the Sessions, on an appeal from the poor's rate, upon the following exceptions: FIRST, That it appeared that notice of the appeal was not given till the day before the Sessions began, whereas there should have been eight days' notice; that the justices (with a view, perhaps, to supply the defect of notice) adjourned the appeal by the first of their orders to the next day, and directed the overseers, &c. to attend them then with the rate; that on the next day, accordingly, they went on to hear, and made the second order on the merits, whereas they ought (as was insisted), whenever there is not proper notice, to adjourn the appeal to the next Sessions. SECONDLY, That they should have inserted the whole rate in their order. THIRDLY, That the complaint was only that some persons who ought to have been charged were omitted in the rate, but the justices had gone beyond the complaint, and had struck out one of the names inserted in it, which was no part of the complaint. FOURTHLY, That the persons whose names were added by the order to the rate did not appear by the order to be inhabitants of the parish, nor to have any real or personal estate there, and by the 43 Eliz. c. 2. no person is liable to be rated but in one of these instances. FIFTHLY, That the names of the persons omitted in the rate (which omission was the ground of the complaint) ought to have been set forth in the appeal, and notice ought to have been given to them.— Upon this rule nisi was granted.—WRIGHT J. This was a motion to quash two orders of Sessions made on an appeal from a poor's rate. By the first they adjourned the appeal, which appears to have been received the first day of Sessions, to the next day, and directed notice to be given to the overseers, &c. to attend them at that time with the rate. By the second order they proceeded to adjudge the notice reasonable and the complaint just, and then to

Before the 17 G. 2. the party grieved might appeal to any Sessions.

County Sessions or justices have no authority with regard to rates made in a corporation town which has justices. See *Rex v. Folly*, ante.

Appeal from a poor-rate may be to a Borough Sessions.

On an appeal against a poor's rate on account of certain persons having been left out of the rate, THE NOTICE given by the appellant to the overseers, of the appeal, must expressly state the names of the persons omitted in the rate; and it must appear, either in the caption or the body of THE RATE, that the persons so omitted are liable to be rated. See now the 41 G. 3. c. 23.

(a) This is the same case as *Rex v. St. Helen's*.

insert and strike out as they thought fit (a). To these orders several objections have been taken: FIRST, That by the first order the justices appear to be convinced that proper notice of the appeal had not been given, yet, instead of adjourning the consideration of it to the next Sessions, as the act directs when there shall not be sufficient notice, they take upon themselves to direct a notice, and adjourn to the next day only. This is the objection. But in answer it is said, the notice directed is only to attend with the rate; the notice of appeal they adjudged sufficient; and the adjourned day was not another, but the same Sessions.—SECONDLY, That the rate is not returned.—It is not necessary.—THIRDLY, That they have struck out the name of a person not complained against. This is a strong objection; but, had it stood singly, that part of the order might have been quashed, and the rest confirmed. This part of it was indeed given up.—FOURTHLY, That the persons inserted are not mentioned to be inhabitants, &c. so that it does not appear they were rateable. I do not think it necessary that this should appear; the justices have satisfied themselves in that respect.—FIFTHLY, That the names of the persons inserted by the justices were not set forth in the appeal. I do not think it necessary that the Sessions should return the whole appeal; it is sufficient if they return that there was an appeal. The principal

(a) These orders, as appears from the MSS. in the possession of the Editor, were as follow: "*Berkshire*. Be it remembered, that at the General Quarter Sessions, &c. holden, &c. before *A.B.*, &c. on the 2d day of *October*, 1753. Upon an appeal by *Mr. John Spinnage* and others, inhabitants of *St. Helen's*, within the borough of *Abingdon*, against the last poor's rate made for the said parish, and the churchwardens and overseers not attending pursuant to a notice given them for that purpose, it is ordered by the Court, that the churchwardens and overseers, or some of them, do attend at this court with the said rate, on the 3d day of *October* instant, at six o'clock in the afternoon of the same day, upon service of this order upon them, or one of them, personally, or by leaving a copy thereof at their respective dwelling-houses on or before eight o'clock of the forenoon of the said day. By the Court." &c. —The second order: "Be it remembered, that at the General Quarter Sessions of the peace holden by adjournment on the 3d day of *October*, &c. before, &c. it is ordered by the aforesaid justices and Court as followeth, viz. Upon hearing the appeal of *John Spinnage* and other inhabitants of the parish of *St. Helen's*, in the borough of *Abingdon*, complaining that they are aggrieved by a rate or assessment made for the relief of the poor of the said parish,

"bearing date the 29th day of *September* 1753, by reason of certain persons being left out of the said rate or assessment, and otherwise; and it appearing unto the Court, that reasonable notice has been given to them the said *John Spinnage* and others, to the churchwardens and overseers of the said parish of their said appeal, the Court doth receive and hear such appeal, and hereby finally determine the same; that is, to say, the Court doth adjudge, that the complaint of the said *John Spinnage* and others is just, and that they are aggrieved by several persons being left out of the said rate or assessment, and otherwise; and they do hereby amend the said rate or assessment by inserting within and making part of the said rate or assessment the names, words, and figures following, viz. "*That John Birch* be rated at 2*l.* 1*os.* — 2*s.* 6*d.* *Francis Hobben* at 5*l.* — 5*s.* *Edward Porter*, blacksmith, 4*l.* — 4*s.* &c. &c. *Edmund Tomkins*, butcher, charged for stock at 25*l.* and his mother taken off for stock — *Charles Hobbes*, grocer, for stock, at 50*l.* "And the Court doth order the said churchwardens and overseers of the parish aforesaid to receive, levy, and collect of the several persons whose names are severally inserted or added to the said rate, the several sums of money charged upon them or set against their said names as aforesaid. By the Court," &c. MSS.

difficulty with me is this: they adjudge that several persons were left out without sufficiently distinguishing who and what those persons were; then they proceed to insert 15 or 16. Now my doubt is, whether the justices ought not to have adjudged what persons were left out, and then inserted the names of those persons, and those only; for theirs is a limited authority.—DENISON J. I do not think it necessary to go particularly through the several objections. My brother has sufficiently answered the first. As to the second, I remember a motion in the case of *Weobly* (a) for removing a rate, and it was said *then* that the rate could not be removed, though there is an old determination to the contrary. But the question here is, Whether or not they ought to have set forth the rate? which I do not think necessary. Whether the persons inserted have or have not been heard, is not to the present purpose, and therefore I shall give no opinion as to the necessity of it. What sticks with me is, Whether *the notice* to the churchwardens, &c. who were to make their defence for not inserting the persons whose omission is complained of, ought not to have expressed who those persons were, that they might have been able to account at the Sessions for having omitted them, and come prepared to answer the complaint? It seems more reasonable that their names should be inserted. Orders are frequently quashed for uncertainty in omitting to state that the persons complained of are chargeable, and the like. If this can be cleared, I see no weight in the other objection, nor impropriety in the orders; the whole is the uncertainty of the complaint. It is not necessary to state the names of the appellants even in the proceedings in a court of law, and there is no weight in the other objection.—FOSTER J. It is incumbent on the Court to lay down some rule in this new case. The same difficulty sticks with me that occurred to my brother *Denison*. I am not clear that the persons inserted are inhabitants, &c. of the parish. The justices are here in the place of the churchwardens and overseers. As it is necessary for the overseers and churchwardens to show that the persons charged are the proper objects of their authority, so since the justices in this case exercise an original authority from which there is no appeal, it is equally necessary for them to do so.—DENISON J. I meant that the *names of the persons* should be expressed, and that they are liable to be charged.—WRIGHT J. I do not think it necessary that this should appear on the *complaint*, but it should appear somewhere that the persons inserted by the justices are liable.—DENISON J. Suppose ten are complained of, the justices may approve of the inserting of five, and not of the rest.—FOSTER J. This is an original authority founded on a complaint, the uncertainty of which has often been held sufficient to quash in order of removal.—The case was ordered to stand over for a lay or two, when WRIGHT J. agreeing with the other two, the orders of the Sessions were quashed.

285. *Rex v. Minchin-Hampton*, H. T. 2 G. 3. 3 Burr. 1310. — S. is owner and occupier of 250 acres of wood-lands in the parish of M.: the wood growing thereon consists chiefly of beech and some oak and ash trees; there is no coppice-wood; the under-wood is left to grow as standards; *by the custom of the country*, where the said beech, oak, and ash trees grow, *beech is timber*; great quantities of such beech-wood have yearly been

If the Sessions expressly find a fact, although they appear to have drawn their conclusion from wrong premises, the parties

are bound by it.
4 T. R. 473.

cut and sold by the said S. (and in the two last years 40 or 50 loads each year) for fire-wood, of the value of from 23s. to 26s. per load, all which said wood so cut for cord-wood is of 30 years growth or upwards, and some of 60 or 80 years, and generally from 10 to 20 inches square; many of the largest beech-trees cut in such wood are sold as cord-wood, and the faggots for fire-wood; and the other of such trees cut therein are sold for making gun-stocks, saddle-trees, and cord-boards, and used as timber for the several purposes of building, but not so frequently as elm or oak; pigs were let run in those woods for the eating of the mast, for which the proprietor had a pecuniary profit when so done, and 20s. worth of such wood is sold for fire-wood to 20s. worth sold for any other purpose; and last year there was made a clear fall of three or four acres; and, therefore, we are of opinion, that by the custom of the country, where the trees and woods in question as aforesaid grow, *beech is timber*, and, therefore, not rateable to the poor's rate by law. It was moved to quash this order on the ground that the Sessions had drawn their conclusion "that *beech is timber*" from wrong premises, and, therefore, the Court would take notice and judge for themselves, whether the Sessions had determined right or not. — But Lord MANSFIELD said, that although the justices at Sessions state a great many things that are immaterial, yet they had expressly stated that "*beech is timber by the custom of that country.*" It is not the use it is put to that makes it either timber or not timber; its being or not being timber depends on the custom of the country; and if it be timber by the custom of the country, it must be presumed that it was timber before 43 Eliz. c. 2.

The remedy against a rate in which personal property is totally omitted is by appeal to the Sessions, for the King's Bench will not, in such case, grant a *mandamus*.

286. *Rex v. Canterbury, H. T. 9 G. 3. 4 Burr. 2290.* — This corporation for maintaining the poor within the city of *Canterbury*, was established by a public statute 1 G. 3. c. 20., by which personal property is directed to be rated, and any person aggrieved by any rate is authorized to appeal to the next Quarter Sessions. In the month of *November 1779* they made a rate, in which they omitted to assess personal property; but although a Sessions was afterwards holden, the rate was not appealed from. A rule was obtained to show cause why a *mandamus* should not issue, commanding them to assess every inhabitant in equal proportion. — YATES J. The Court cannot issue a *mandamus* to make an equal rate: it is within the jurisdiction of the justices of the peace to judge, whether a rate be equal, or whether proper persons are put into it. (a) If it be unequal, or if persons who ought to be inserted are omitted, it is matter of appeal, and within the jurisdiction of the Sessions; but the present application is made to this Court *per saltum*. This rate was made in *November*; a Quarter Sessions has been holden since, and no appeal made to it from the rate. — ASTON J. agreed with YATES J. that the persons who complained of this rate had done wrong in coming to this Court *per saltum*, without appealing to the Sessions. — WILLES J. concurred, observing, that by 17 G. 2. c. 38. § 4: an appeal is given to any persons who have any objection to any person being put in or left out of the rate. — Rule discharged.

(a) See *Butler v. Cobbett*, 11 Mod. 254. and *Rex v. Weobly*, *ante*, pl. 194. *Rex v. Barnstaple*, *ante*, pl. 118. *Rex v. Freshford*, Andr. 21.

287. *Rex v. Andover*, H. T. 17 G. 3. *Cowp.* 550. — The Sessions ordered the rate to be amended, by putting into such rate a rate on *W.* of seven-pence in respect of such his stock and profits; and on *B.* of three-pence halfpenny in respect of his stock and profits; and on *S.* of two-pence halfpenny in respect of her stock in trade and profits; and on *D.* two-pence halfpenny in respect of her stock in trade and profits; and so on as to several others; and then set forth, that at an adjournment of the said Sessions the justices amended the same rate, &c., and set out the order of amendment *verbalim*. — DUNNING objected, that the order on the face of it was bad, inasmuch as it did not appear, that the several persons whose names were added to the rate, had notice of the appeal, or litigated the question at the Sessions: they were, therefore, without redress; for it necessarily precluded them from their appeal. The Sessions, as to them, made an original rate, without having given them an opportunity of defending themselves. The Court held this to be a fatal objection; and therefore the order of Sessions was quashed. (a)

If upon removal of an order of Sessions adjudging that certain persons ought to be added to a poor-rate, and ordering the rate to be amended accordingly, the Sessions omit to state that such persons had notice, or appeared and were heard on the appeal, it is fatal.

288. *Rex v. Mathews*, H. T. 17 G. 3. *Cald.* 1. — On an appeal against a poor's rate, the Sessions stated a case for the opinion of the Court, in which they found, that the appellant *M.* was rated for a keeper's lodge and two acres of land situate in *Windsor Great Park*; that His Majesty granted the office of ranger or keeper of his said park, with all the lands, grounds, and soil within the same, lodges, and privileges thereto belonging, to his brother Prince *Henry Frederick*, or his assigns, during pleasure, who, by virtue of such office, occupied the great lodge and park; and that the appellant was one of the keepers appointed by his Royal Highness, and by virtue of his office occupied the lodge and the two acres of land for which he was so rated. — BEARCROFT, insisted, that the special case was contradictory; as it is found that the Duke, as ranger, was occupier of the whole, and also that the appellant, as keeper, was occupier of part; and, therefore, that THE DUKE, if the first finding prevailed in the opinion of the Court, could only be rateable. But this objection, as it went only to an amendment, was disregarded.

The Sessions may amend defects of form in the statement of a special case.

289. *Rex v. Hill*, H. T. 17 G. 3. *Cowp.* 613. — Upon an appeal against a poor-rate, assessing *H.* in respect to his stock in trade in the parish, the Sessions confirmed the rate, and stated a case for the opinion of the Court. A rule was obtained to show cause why this order of confirmation should not be quashed; and, on showing cause, LORD MANSFIELD asked, what the usage heretofore had been in this place with respect to rating stock in trade? — MORRIS answered, that the usage was waived; and that he and WIDMORE had agreed at the Sessions to bring the general question before the Court. — LORD MANSFIELD said, they had no right to do so; and accordingly the Court ordered the case to be referred back to the Sessions for this purpose.

The justices at sessions, on stating a case on an appeal from a poor-rate, cannot permit a material fact to be omitted in order to bring a general question before the Court, though the counsel on each side consent to it.

290. *Rex v. Coode (b)*, T. T., 24 G. 3. EDITOR'S MSS. — On the 13th January notice of appeal was given to the defendants, who were churchwardens and overseers of *P.*, against two rates for the relief of the poor, made at *P.* on the 10th of December

The appeal against a poor's rate must be in all cases to the next session;

(a) See *S. P. Rex v. St. Helen's*, Say. Rep. 118.

(b) See *Rex v. Justices of Dorsetshire*, post, pl. 476.

for the 17 G. 2. c. 38. § 7. has repealed the 43 Eliz. c. 2. § 4. which left the appeal to any sessions.

and 5th of *January* 1784. The notice was general, that several persons were put on the rate who had no property, the names of the persons not being specified. The *Epiphany* Sessions were held on the 15th of *January*, when this appeal was dismissed for insufficiency of the notice. On the 12th of *April* a fresh notice of appeal was given against the same rates, stating, that the appellants meant to procure the appeal to be reheard, and specified the persons objected to as improperly inserted or omitted. And on the 13th of *April* and 27th of *January* three other notices of appeal against one or both of the same rates were given, specifying different sorts of persons objected to: these notices did not refer to any former appeal, the intention of the appellants being to proceed upon them under the 43 *Eliz. c. 2. § 4.* which does not confine the appeal to the next Sessions. These four appeals came on to be heard on the 23d of *April*. — THE COURT first took into consideration, whether they were competent to rehear a matter of appeal dismissed at the last Sessions for insufficiency of notice; and determined that such appeal could not be reheard, and dismissed the appeal of the 12th *April*. They then took into consideration more of the appeals on the 13th of *April*, Whether an appeal can be reheard against a rate on stat. 43 *Eliz. c. 2. § 4.* at any other Sessions except the next after making such rate? considering the statute 17 G. 2. c. 17.; and they thereupon determined that such appeal could be received. Then the merits being gone into, it was ordered, that the rate be quashed for insufficiency: similar orders were made on the other two appeals. The order of the 15th *January*, and the four orders of the 22d *April*, being all removed, a motion was made to quash the three last orders of the 22d *April*. The reasons of the several determinations were set out in the orders. — BEARCROFT showed cause on the order of the 15th *January*. The only question before the Sessions was, Whether the notice of appeal was sufficient before the *Easter* Sessions? Different notices were given, one on the 17 G. 2. c. 38. § 7. considering the order of the 15th *January* as not final, and others on the 43 *Eliz. c. 2. § 4.* as if no appeal had been made. The Sessions had held, that this second set of appeals would lie; and the motion to quash these orders was on two grounds, First, That the 17 G. 2. c. 38. § 6. had repealed or suspended the 43 *Eliz. c. 2.* as to the appeals against rates. SECONDLY, That after an appeal under the 17 G. 2. c. 38. § 6. there could not be any under the 43 *Eliz. c. 2. § 4.* As to the first point it is very clear. Originally, the appeal under the 43 *Eliz. c. 2.* might be to any Sessions; that is settled in *Rex v. St. Giles* (a), and other cases, and will not be disputed. The question then is, Whether it is confined to the next Sessions by 17 G. 2. c. 38. § 4.? That statute has no negative words, and it has been determined in several cases, particularly in *Dr. Foster's case* (b), that an act worded affirmatively does not repeal a prior act, *in pari materia*. An appeal is given by the same clause, and in the same words, against overseers' accounts (c); and in practice, appeals are brought at any Sessions against these accounts. A case of that sort had been before this Court in 1714, from *Pevensey*. DR. BURN was clearly of opinion, that the two statutes subsisted together, and that an appeal might be brought under either; only, if the appellant wanted to have costs, he must apply to the next Sessions under 17 G. 2. c. 38. § 7. In truth,

(a) *Ante*, pl. 280, 281.

(b) 11 Co. 62.

(c) *Vide post*, ch. 3.

nothing could be more material than for the legislature to mean, if you take the matter up immediately you shall have costs, if you lie by you shall not: the orders before the Court had given costs, and that part of it was undoubtedly bad, but the rest would remain good. The practice all over England had followed DR. BURN'S opinion, so that it became a question of considerable importance. The case of *Rex v. The Justices of Berkshire* (a), which had been mentioned by Willes J., was not a decision to the contrary: it was an appeal against an account allowed by one justice only, a jurisdiction created by 17 G. 2. c. 30. § 6. and against which no appeal lay under 43 Eliz. c. 2. § 4. If it applied at all to this case, it afforded an argument that in other cases an appeal under 43 Eliz. c. 2. would lie, since the Court had grounded their determination on this particular circumstance. — AS TO THE SECOND POINT, it was not reasonable that by a mere blunder in the notice the parties should be concluded for ever on the merits. In fact, in the present case, the time was too short to enable the appellants to give a sufficient notice before the Epiphany Sessions; and the justices ought to have retained the appeal and respited it. — THE COURT desired that this case might stand over for some days; and that in the mean time authorities might be searched for, and an inquiry made into the practice. A few days after Mr. Batt informed the Court that he had seen the case of *Rex v. Lord Ashburnham* [probably the *Pevensey* case (b),] which was an overseer's account (c); but the doctrine laid down by Lord Mansfield and Mr. Justice Aston was applicable to this case. He said, he had inquired into the practice, and found that in counties where there are no boroughs such appeals are not frequent; but that in Gloucestershire, Staffordshire, Berkshire, Dorsetshire, Surrey, and some others which he mentioned, they were received at any time. In the West Riding they were confined to the next Sessions. He observed, that much inconvenience might arise if appeals in all cases were to be restrained to the next Sessions; for a rate might purposely be made too late to give notice in time: to which Mr. Justice Ashurst answered, that the next Sessions always meant the next possible Sessions. — Mr. Batt then proceeded to state from affidavits some facts to show, that in this case there had not been sufficient time, and that, in truth, the Easter Sessions ought to be considered as the next; and he pressed very much to have the case sent back to be re-stated as to those facts. — LORD MANS-

(a) Vide post, pl. 327.

(c) Rex v. Welch, post, pl. 346.

(b) Rex v. Lord Ashburnham, E. T. 15 G. 3. — The Court made the rule absolute for quashing several orders of Sessions for the liberty of Pevensey in Sussex, by which the justices dismissed appeals against overseers' accounts for several years as coming too late, not being made to the next Sessions. The Court were of opinion, that, as the proceedings might be under the 43 Eliz., the defendant might appeal at any time, and therefore quashed the order of dismissal: and Aston J. cited a case, in which the Court had been of that opinion before, though he thought great inconvenience might arise from trying appeals at a long distance of

time. There was another order of Sessions before the Court, which had confirmed the accounts of the last year, against which the appeal was at the next sessions. To this it was objected by Dunning, that the Sessions had allowed in their accounts several illegal charges, particularly a charge of upwards of 8*l.* for a treat at a public house, which was admitted to be an illegal demand; and on that account the order of confirmation at the Sessions was quashed; and per Aston J. there cannot in these cases be any allowance for time and trouble, but merely for disbursements out of pocket.

FIELD said, as at present advised, he thought the 17 G. 2. c. 38. § 7. did confine the appeal to the next Sessions; but that on the affidavits stated, the case ought to be sent back, in which case there must be a rule to show cause, that the other side might have an opportunity of answering the affidavits. — ASHHURST and BULLER J., agreed with Lord Mansfield as to the construction to be put on the 17 G. 2. c. 38. § 7.; but they thought the case could not be sent back, unless for a defect appearing on the face of it; and that if the appellants were prevented by any misbehaviour of the other side from giving sufficient notice in time before the next Sessions, they ought to have applied to the Court in the following term. — After some conversation, THE COURT agreed, that they must decide that the 17 G. 2. c. 38. § 7. had repealed the 43 Eliz. c. 2. § 4. in this particular; that the case could not be sent back, and that the orders complained of must be quashed.

An appeal against a poor's rate must be made to the next sessions after the publication of the assessment, for it is by making the rate that the party is aggrieved.

(a) *Ante*, pl. 113.

(b) The preceding case.

291. *Rex v. Micklefield*, H. T. 25 G. 3. EDITOR'S MSS. — This was an appeal against three rates for the relief of the poor, made 12th May, 14th June, and 15th September 1783. The appeal was to the Michaelmas sessions, where the first rate was given up by the respondents, the third quashed for inequality, and the second also quashed, subject to the opinion of the Court of King's Bench on a case which stated, that the money raised was to reimburse the overasers for the expence of law proceedings. The Court confirmed some parts of the order, and it was sent back to be re-stated as to one particular fact. (a) On its being returned, Cockell objected, that the appeal appeared not to be to the next sessions, and was, therefore, by the authority of *Rex v. Cood* (b), too late. — Fearnley replied, that it only appeared on the order that the rate was made on such a day, but it did not appear at what time it was allowed; and until allowance there could be no appeal. He said, that, in fact, the rate was allowed on the 28th of June, and published in a general way, namely, a rate at so much the pound in cash on the 29th. The Midsummer sessions were held the beginning of July, but the appellant had no opportunity of seeing the rate, or having a copy, so as to know the precise sums assessed, or to be able to appeal till after the sessions; and it might be attended with great inconvenience, as the parish-officers, by publishing the rate late, and avoiding to give copies, might defeat the party of his appeal: besides, the appeal was to the next sessions after he was aggrieved; and he could not be aggrieved till he was called upon to pay. But this order had been in part confirmed by the Court last term; and it would be inconsistent to quash it now, as being too late. — LORD MANSFIELD. The objection was not then taken; the party is aggrieved by the assessment, and must appeal from that: the only time to be looked to is the time of publication; and it was on this the determination went in *Rex v. Cood*. (c) The time of publication is not mentioned in this case; but we must intend a publication, because the justices call it "rate." — ASHHURST J. In the cases of hardship and fraud put by Fearnley, the appeal might be to the following sessions, as being the next possible; but that is not the case here. The publication of a rate at so much in the pound was enough to put the party on inquiring: he did not do so, and the appeal is too late.

(c) *Ante*, pl. 290.

Where a person is overcharged in a poor-rate,

292. *Rex v. Cheshunt*, T. T. 28 G. 3. 2 T. R. 623. — The Sessions ordered that the appellant should be relieved, by being

charged in the rate or assessment at the rate of 21*l.* a year, instead of the sum which he then stood charged with; and that the rate or assessment should be amended accordingly. — THE COURT said, that in this case no person had been omitted in the rate; but an occupier was overcharged; and they were therefore clearly of opinion, that there was no necessity for the Sessions to quash this rate; that they had acted properly in amending it; and that the statute 17 G. 2. c. 38. would be nugatory, if it did not apply to a case like the present.

the Sessions may, under 17 G. 2. c. 18. relieve him on appeal, by lessening the sum assessed on him. See now the statute 41 G. 3. c. 29. § 1.

293. *Rex v. Atkins*, M. T. 31 G. 3. 4 T. R. 12. — A poor-rate was made in October 1789, and allowed in the November following; against which the defendant appealed to the last Easter sessions, when the appeal was dismissed with costs, because it was not made to the next sessions. The rate and the order of Sessions having been removed here by *certiorari*, THE COURT, without hearing any argument, confirmed the order of Sessions on the authority of the cases of *Rex v. Coode* (a), and *Rex v. Micklefield*. (b)

An appeal against a poor rate must be lodged at the sessions next after the allowance of it.

(a) *Ante*, pl. 290.
(b) *Ante*, pl. 291.

294. *Rex v. Newcomb*, T. T. 31 G. 3. 4 T. R. 368. — A poor's rate was made for the parish of H.; the rate was not published until the third Sunday after it had been allowed, and being, therefore, clearly illegal and void, the magistrates refused to grant a warrant of distress under it. On a motion for a *mandamus* it appeared that there had been an appeal to the Sessions against this rate, on the ground of inequality, and that the appeal was dismissed. It was contended that the order of Sessions could not give effect to a rate which was before a nullity. On the other hand it was said that this defect was subject of appeal, and that the rate had been appealed against on another ground, and confirmed. But THE COURT held, that this was a radical defect in the rate itself, which nothing could cure.

The Sessions confirming a rate on one ground, will not render it valid, if it be radically bad on another. S. C. *ante*.

295. *Rex v. Newbury* (c), M. T. 32 G. 3. 4 T. R. 475. — The Sessions quashed a poor-rate, subject to the opinion of this Court on a case which stated, that previous to the appeal a regular notice was given by the appellant, that he intended to appeal on these grounds; that he was not an inhabitant of the parish of N., nor occupier of any property there; that the tolls of the navigation of the river K., for which he was rated, were neither collected or due there; that he was not rateable at all for those tolls in N., or if he were, not to the amount for which he was rated; and that the rate was for those reasons unjust and unequal. That, after proving service of this notice, the respondents put in the rate in question, and proved the due signing, allowance, and publication of the same; in which the appellant was rated 40*l.* as occupier of the tolls of the navigation, of the yearly amount of 400*l.* That the respondents were then called upon by the appellant's counsel to support the assessment upon the appellant, which they declined, relying on the validity of the rate, until impeached by evidence on the part of the appellant. The appellant produced no evidence whatever; and the justices, being of opinion that the respondents ought to have produced evidence in support of the assessment, quashed the rate, subject, &c. — LORD KENYON C. J. at first hinted that this Court ought not to interfere in such a case, to control the practice of the Quarter Sessions. But afterwards he said, that law, justice, and convenience required that the respondents should begin in cases of this

If a party appeal against a poor-rate on the ground that he has no rateable property in the parish, the respondents must first establish their case.

(c) See *Rex v. Justices of Suffolk*, *post*, pl. 303, 304. *Rex v. Knill*, *post*, pl. 600.

kind as well as on appeals against orders of removal; in which last cases the rule universally obtains. Here the first objection to the rate was, that the appellant had no rateable property in *N.*; the respondents, therefore, should have shown that he had some property, in respect of which he was liable to be rated: *it was impossible for the appellant in the first instance to prove the negative.* In writs of error, and appeals to the House of Lords, where each party is in possession of all the evidence on both sides, the party who impeaches the decision below always begins: but in a case of this kind, where it is an *ex parte* proceeding, and where the appeal comes on to be heard naked and destitute of all evidence before the Court, those who have done the act ought to establish the propriety of it by evidence. — *ASHHURST J.* *The respondents ought to have established their own rate.* At all events we ought to give credit to the justices at the Sessions, that they know their own practice; and no ground is laid before us to warrant us in saying that they have acted wrong. — *BULLER J.* My first doubt was about the propriety of any case being sent here to determine upon the practice of the Court of Sessions: but, as the case is here, I think we ought to give our opinion upon that practice, and to lay down a general rule, which may be a guide in future to all the Quarter Sessions. And I see no objection to that which has been suggested by my Lord. — But *THE COURT* said, in this case it would be proper to send it down again to the Sessions to be heard. (a)

The Sessions, on an appeal for not rating personal property, must be satisfied that the property belongs to the persons intended to be rated, and that it is productive of profit, before they can quash the rate.

296. *Rex v. Dursley, M. T.* 35 G. 3. 6 T. R. 53. — *H.* appealed against a poor's rate, for that *T. and Co.*, and several others, without naming them, were not rated for their goods, stock in trade, and personal effects. The Sessions being of opinion, that stock in trade and personal property ought to have been charged in the rate, quashed the rate, subject to the opinion of this Court, upon a case in which they did not state, whether or not this property belonged to the several persons intended to be included in the rate. — *LORD KENYON C. J.* The justices at the Sessions have not stated, whether or not this property belonged to the several persons whom the appellant wished to include in the rate, or if it did, whether or not it produced profit, or whether or not it was liable to incumbrances equal to the value of the property itself. The bare possession of personal property is, to be sure, evidence from which the justices may draw the conclusion that the possessor should be rated; but here the justices, after stating the possession, have raised a doubt respecting other facts, which they should have inquired into, and determined upon. They have raised a mist which we cannot dispel. The facts are not sufficiently disclosed to enable us to draw the conclusion that these persons ought to be rated. And the order of Sessions was quashed.

If a person be aggrieved by a rate being made

297. *Durrant v. Boys, H. T.* 36 G. 3. 6 T. R. 580. — A poor's rate was made for six months prospectively, but the plaintiff, who

(a) *J. Heywood, amicus curiæ*, said, after this case was heard, that at the *Yorkshire* sessions, where more appeals of this kind were lodged than in any other county, when the appellant ob-

jected to his being rated at all, it is the practice for the respondents to begin; but if he object to the *quantum* of the rate, then the *onus* lay on him.

was the person rated, never appealed against it to the Sessions, but on its being levied by distress, brought the present action of trespass against the justices who granted the warrant and the overseer who executed it. The question was, Whether the plaintiff ought to have appealed to the next Sessions? — THE COURT. The answer to this action is furnished by the case of *Hutchins v. Chambers* (a), where Lord Mansfield, after the first argument, said, “All about the rates is clearly out of the present case; for if they are bad, the parties who thought themselves aggrieved should have appealed.” This authority, which has convenience as well as reason and law for its foundation, is directly in point. Therefore, if it had appeared on this rate, that it was made for six months, and if the plaintiff wished to object to it on that account, of the validity of which objection I will say nothing, he ought to have appealed against it to the Sessions. The legislature seem to have been anxious that preliminary objections to a rate should be made in the first instance: the statute 17 G. 2. c. 28. directs that poor rates shall be published in the church the next Sunday after they are allowed; and any persons objecting to the rates must appeal to the next Sessions; there the question is decided in a *forum domesticum*, and in many instances before the rates are collected. Therefore, on the authority of that case, I am clearly of opinion, that the plaintiff should have objected to this rate (if he thought it objectionable) by appealing to the Quarter Sessions, and having waived making his objection there, it is not competent to him to make it in this action. And judgment of nonsuit was accordingly given.

298. *Rex v. Topham*, T. T. 50 G. 3. 12 East, 546. — The defendant appealed against a poor-rate for D. Rate confirmed, subject, &c. The defendant was rated as occupier of property of the annual value of 250*l.* and he appealed against the rate, giving notice of the grounds of his appeal, 1st, that he had no rateable property in the parish; and 2dly, that he had not rateable property to the amount at which he was rated. On the part of the respondents it was proved that the appellant was in the annual receipt of certain tithe rents originating in the D. inclosure act (which act was admitted as part of the case) of the annual value of 6*s.* 8*d.* It was further proved that certain other sums were received by him for such tithe rents, but there was no proof of their amount. Here the respondents closed their case; insisting that as they had proved the appellant to be in possession of some rateable property, it was incumbent on him to prove that in fact he had been over-rated. The appellant, on the contrary, insisted that this composition or rent was not rateable at all. The Sessions held that it was rateable. The appellant then contended that as there was no proof of any specific sum having been paid beyond the 6*s.* 8*d.*, the rate ought to be amended, by inserting that sum instead of the 250*l.* The Sessions held that the proof of over-rating lay on the appellant, and confirmed the rate generally. — After the case was stated, LORD ELLENBOROUGH C. J. said, the question is, Whether a person, who I will suppose for the present is liable to be rated for something beyond the 6*s.* 8*d.*, can be rated to the amount of 250*l.* and then left to pare down that assessment, upon an appeal, to the amount which it ought to be? He might as well have been charged to the extent of 50,000*l.* It is not stated as a fact in the case that

for a longer time than is necessary, he must object to it by an appeal to the Sessions.

(a) *Ante*, pl. 264.

Where the appellant disputes before the Sessions the quantum of the rate, it is not sufficient for the respondent to show that the appellant is in possession of some rateable property within the parish, they must also show some probable ground for the amount at which they charge the party in the rate.

the appellant was in the receipt of the rents and compositions to the amount of 250*l*. If the Sessions have proceeded upon what the Court has said in some cases, that if the party rated have rateable property in the parish, they will not enquire into the *quantum* of the rate, they have egregiously mistaken what the Court meant. When the question before the Sessions is upon the *quantum* of the rate, the officers making it must show to the justices some probable ground for the amount at which they charge the party in the rate. The mischief of any other rule would be enormous; a small occupier may be rated at once in the round sum of 1000*l*., and left to struggle his way out of that charge as he can. — LORD ELLENBOROUGH C. J. then directed the case to be sent back to the Sessions to be heard, re-considered, and re-stated.

The party objecting to a poor rate may appeal to the next Sessions, for which he is in time to give an effectual notice of appeal, after the publication of the rate; and one intervening day between such publication and the next immediate Quarter Sessions, is not sufficient time for the purpose.

Several parties having a joint grievance, such as the omission of persons in the rate who ought to be rated, may join in giving one notice of appeal to the parish officers.

299. *Rex v. Justices of Sussex*, H. T. 52 G. 3. 15 East, 206. — Rule for a *mandamus* to the defendants, commanding them to enter continuances on the appeal of *W. R.*, *G. D.*, and four others, against a poor's rate for *H.*, to the next General Quarter Sessions, &c. The affidavit of *D.*, one of the appellants, stated, that on the 5th of *October* last, a poor's rate was allowed by two justices, and on the following day (*Sunday*) it was published in the parish church of *H.* That the *Michaelmas* Quarter Sessions were holden at *Petworth*, on the 8th of *October*; there being only one intervening day between the publication of the rate and the Quarter Sessions, which was too short a time to enable him to inspect the rate, to see if the inequalities in the former rate had been continued, and whether the property omitted in former assessments had been inserted in the rate, so as to determine the opponent whether or not to appeal against it at the said Sessions. The affidavit of the attorney for the appellants also stated, that after giving due notice of appeal to the several persons interested, the appeal was entered for trial at the last Sessions held at *Chichester*, when, after proof of the service of the notice, objections were taken; 1st, That the appeal was out of time, because not lodged at the *October* Sessions preceding; 2dly, That notices of appeal should have been separately given by each appellant, and not one conjoint notice. That the Court determined the notice bad on both grounds; and upon this confirmed the rate, with costs. The notice given was signed by six appellants, and stated the causes of appeal; 1st, That several persons (*nominatim*) were not in any manner rated for the lands, &c. occupied by them; 2dly. That several persons (*nominatim*) were rated at much less, and not enough in proportion with the appellants, for the premises in their occupation. *Petworth* is distant from *H.*, where the appellants resided, about 18 miles. The affidavit of the parish officers opposing the rule stated, that in the evening of the 6th of *October*, after the rate was published in the church, a vestry was held, at which two of the appellants were present, and no application was then made by them to inspect the rate. — LORD ELLENBOROUGH C. J. upon the first point asked, Why the parish officers made their rate so close upon the time of the Sessions; it appeared as if they had done it with a view of ousting the parties of their appeal. The Court had decided that morning (*a*), that the next Sessions meant the next practicable Sessions at which an effectual appeal could be lodged. If, by the late publication of the rate, the parties are driven into such a narrow point of time, as not to be able

(a) *Vide*, next case.

to make an effectual appeal the next Sessions, those must be considered the *next*, when such appeal can be made effectually. And upon the second point, the Court considered the case of *Rex v. While* (a), as a sufficient authority to support the present appeal.

300. *Rex v. Justices of London*, E. T. 52 G. 3. 15 East; 632. — In this case, LORD ELLENBOROUGH C. J. delivered the judgment of the Court. — This was a motion for a mandamus to enter continuances upon an appeal by *J. Stocks*, against a poor's rate; and the question was, Whether in *London*, where there are eight Sessions every year, four *General Quarter Sessions*, and four *General Sessions*, a party is bound to appeal to the *General Sessions*, if they occur first after the rate; or whether he is entitled to pass over the *General Sessions*, and appeal to the next *General Quarter Sessions*. The rate in this case was published in the church on the 28th of October 1810; the next *General Quarter Sessions* were on the 29th of the same month; but as there was no interval between them and the publication, it could not be expected that the appeal should be made at those Sessions. The next *General Quarter Sessions* were in January 1811, and to that Sessions Mr. *Stocks* appealed; but as a *General Session* had intervened, the question is, Whether the appeal was not out of time? The appeal was adjourned to the three following Quarter Sessions; and at an adjournment of the October Quarter Sessions, in November 1811, the Sessions decided, that Mr. S. had not appealed in time; and on that ground dismissed the appeal. By the stat. 43 Eliz. c. 2. § 4. if any person shall find himself aggrieved, the justices of peace, at their *General Quarter Sessions*, shall make such order therein as to them shall be thought convenient. This statute, therefore, gave the appeal to the *Quarter Sessions* indefinitely, without even limiting it to the next which should occur. By the stat. 17 G. 2. c. 38. § 4. a person aggrieved may appeal to the next *General* or *Quarter Sessions* for the county, riding, division, corporation, or franchise, where the township, parish, or place for which the rate is made, lies; but if it shall appear that reasonable notice was not given of the appeal, the justices shall adjourn it to the next *Quarter Sessions*, and then finally hear and determine it. And the said justices may award to the party for whom the appeal shall be determined, reasonable costs, in the same manner as they are empowered to do in cases of appeals concerning the settlement of poor persons, by stat. 8 & 9 W. 3. c. 30. This statute, therefore, limits the appeal (in terms) to the next *General* or *Quarter Sessions*; and the question is, Whether the word "general" is used with a view to those places which have both *General* and *Quarter Sessions*, as *London* and *Middlesex*; or whether it is not used as another word for *Quarter Sessions*, in contradistinction to a *Special Sessions*; every *Quarter Sessions* being a *General Sessions*? And we are of opinion, that the latter is the true construction; and that an appeal to the next *Quarter Sessions*, notwithstanding the intervention of *General Sessions*, is in time; the direction to adjourn to the next *Quarter Sessions*, if proper notice be not given, dropping the word *general*, falls in with the notion that the legislature used it in the sense we adopt; for if these appeals were to be heard at the *General Sessions* which intervened between the quarters, no reason can be given why the adjournment should not have been to the next *General* as well as to the next *Quarter Sessions*. The

(a) *Ante*, pl. 199. An appeal against a poor-rate in *London* or *Middlesex* must be made as in all other counties, to the next (i. e. next possible) general Quarter Sessions, though the statute 17 G. 2. c. 38. § 4. in its terms gives the appeal to the next *General* or *Quarter Sessions*; and though in the two counties named there are four *General* as well as four *General Quarter Sessions*.

direction, too, as to costs, raises an inference, that this is the right construction : for no costs can be given under the stat. 8 & 9 W. 3. but at the *Quarter Sessions*; inasmuch as the appeal against an order of removal is, under the stat. 13 & 14 Car. 2. c. 12. § 2. confined to the *Quarter Sessions*. The next section, too, in the stat. 17 G. 2. c. 38. viz. § 5. speaks of the General or Quarter Sessions for a *county, riding, or division*, whereas there is no *county* but *Middlesex*, in which there are in fact *General Sessions* in addition to the *Quarter Sessions*; and they do not occur in any *riding* or *division*. We therefore think that the appeal was in time, and that the rule should be made absolute.

301. *Rex v. Ambleside*, M. T. 53 G. 3. 16 East, 380.—(For the particulars of this case, see *ante*, pl. 230.)

On an appeal against a rate on the ground that A. is not rated for his stock in trade, the sessions ought amend the rate and not quash it.

Where corporation justices consist of a greater number than four, an appeal lies to them at Sessions against a poor rate, although there be less than four who are devoid of interest in the question.

302. *Rex v. Justices of Essex*, M. T. 57 G. 3. 5 M. & S. 513.—Upon a rule nisi for a *mandamus* to the Justices of *Essex*, to receive an appeal against a poor's rate for the parish of S., which the justices had refused to receive at their last *Midsummer Quarter Sessions*, on the ground that it ought to have been made to the justices of the town Sessions, the case was thus : The limits of the town and parish of S. are co-extensive. The town of S. is a town corporate, and by the charter, (dated the 26th December, 6 Will. & Mary), the mayor, during his mayoralty, and for one whole year next ensuing, the recorder and the deputy recorder for the time being, and the two senior aldermen for the time being, (making together six,) are constituted justices within the town and precincts thereof. The corporation of S. have regularly held a Court of Quarter Sessions from the date of their charter. The mayor is elected from among the aldermen, and the aldermen from the inhabitants of the town, and, except in the instance of the recorder and deputy recorder, the justices composing the court of Quarter Sessions must be resident in the parish of S. The mayor, in case of sickness or absence from the town, may appoint a deputy from among the aldermen. The appellants gave regular notice to the parish officers of their intention to appeal, and also (among others) to the mayor and recorder, as being two of the persons in respect of whom they were overrated; and the other town justices, except the deputy recorder, were also rated in the said assessment. — The Court, thinking the case to be of general importance, desired time to look into the acts. — LORD ELLENBOROUGH C. J. now delivered the judgment of the Court. In the case respecting the justices of the borough of S., which was depending yesterday, the Court took time to look into the several acts of parliament, and cases referred to. Of the six corporation justices, consisting of the recorder, deputy-recorder, two senior aldermen, and two other persons, it was contended, that the last four were disqualified by law from sitting upon any appeal in any matter respecting the poor laws, as being, in respect of their inhabitancy and liability to be rated within the borough, on that account, incompetent, and that these being judicial acts, as persons interested, they were, in the language of one of the cases cited, tacitly excepted. And the case of the parishes of *Great Charte* and *Kennington* (a), and of *Foxham Tything*, in *Com. Wills* (b), were relied on to this effect; but, upon looking into the

(a) 2 Str. 1173.

(b) 2 Salk. 607.

statutes, 43 *Eliz. c. 2.*, 16 *G. 2. c. 18.*, and 17 *G. 2. c. 38.*, we are of opinion that the justices of the borough of S. are not disqualified from sitting as a court of appeal under the poor laws, on the ground of their being rated or chargeable with the rates of the place within which their jurisdiction is to be exercised. By the 43 *Eliz. c. 2. § 8.*, as head officers of the town corporate, they being justices of the peace, have the same authority within the limits and precincts of their jurisdiction, as is limited, prescribed, and appointed by that act to justices of the peace of the county, "and no other justices of the peace are to enter or meddle there." Being invested with the like jurisdiction, both original and appellate, on the subject of the poor laws, with justices of the county, and with the sort of *ne introncant* provision in their favour as to its exercise, which I have last stated, there occurred in *Michaelmas* term, 16 *G. 2.*, the case in 2 *Str.* 1178., in which it was held that a justice could not join in removing a pauper from his own parish. This decision, in its letter, if it should continue to be acted upon as a general rule of law, would have wholly disabled the justices of a great many towns corporate from acting in the execution of the poor laws, both in an original and in an appellate character, as justices in respect to the same; and it is fair to presume, from the very nearly contemporary date of the stat. 16 *G. 2. c. 18.* with this decision, that this act was introduced to obviate this inconvenience; for reciting, "that doubts had arisen, whether, according to the laws and statutes then in force, His Majesty's justices of the peace might lawfully act in any case relating to the parishes and places to the rates and taxes of which such justices respectively are rated or chargeable," it enacts, "That it shall and may be lawful to and for all and every justice or justices of the peace for any county, riding, city, liberty, franchise, borough, or town corporate, within their respective jurisdictions, to make, do, and execute, all and every act or acts, matter or matters, thing or things, appertaining to their office as justice or justices of the peace, so far as the same relates to the laws for the relief, maintenance, and settlement of poor persons, or to any other laws concerning parochial taxes, levies, or rates, notwithstanding any such justice or justices of the peace is or are rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place affected by any such act or acts of such justice or justices as aforesaid." However, inasmuch as, from the greatness of the number of justices of the peace for counties, the attendance of any particular justice could be spared upon appeals, it provides that "that act, or any thing therein contained, should not authorize or empower any justice or justices of the peace for any county or riding at large, to act in the determination of any appeal to the Quarter Sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place where such justice or justices of the peace is or are so charged, taxed, or chargeable as aforesaid; any thing therein contained to the contrary notwithstanding." Here, it will be observed, that "justices of the peace for cities, liberties, franchises, boroughs, or towns corporate," who are all included by name in the enabling clause of this statute, are not included in this prohibitory provision in the case of appeals, which prohibition is confined expressly to justices of the peace for

counties and ridings at large only. The stat. 17 G. 2. c. 38. § 5, probably adverting to and meaning to obviate the danger of admitting justices, under any bias or interest in the subject-matter of the appeal, to sit upon such appeals, where, from the smallness of the number of the attending justices, such bias or interest shall be likely to operate with prejudicial effect upon the administration of justice, provides, "That in all corporations and franchises, which have not four justices of the peace, it shall and may be lawful for any person or persons, in any of the cases aforesaid, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next General or Quarter Sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate:" where the corporation justices consisted of a larger number of persons than four, thinking it probably unnecessary to interfere with the exclusive jurisdiction on this subject, which they derived under the 43 Eliz. c. 2. § 8, which has already been observed upon. We are, therefore, upon a view of the provisions of the several statutes referred to on this subject, and adverting to their policy and object, of opinion that the legislature meant, in the case of borough justices (where the whole number of them was four or more), as in the present case, to leave their jurisdiction under 43 Eliz. entire, not curtailed or abridged, from suspicions of possible abuse; a liberal confidence on the part of the legislature, which ought to be repaid by the most perfect impartiality and justice on the part of those to whom such a jurisdiction is, under such circumstances, entrusted. — Rule discharged.

On appeal against a poor rate on the ground that the appellant was overrated, the practice at the Sessions requiring the appellant to begin by proving his case, which the appellant refusing to do, the appeal was dismissed; the Court refused a mandamus to the Sessions to re-hear the appeal on this objection.

(a) *Rex v. Newbury*, ante, pl. 295.
Rex v. Topham, ante, pl. 298.
Rex v. Justices of Wilts, post, v. ii. pl. 952.

303. *Rex v. Justices of Suffolk*, H. T. 57 G. 3. 6 M. & S. 57. — *Primrose* moved for a mandamus to the justices to re-hear an appeal against a poor-rate. The appellant gave notice of appeal on the ground that he was over-rated, and at the hearing of the appeal called on the respondents to begin by proving the rate; to which the respondents objected, contending that, according to the practice, the appellant ought to begin by establishing his objection to the rate, and the justices being of that opinion, and the appellant refusing to begin, they dismissed the appeal. It was now urged, on the authority of several cases (a), that this practice ought not to prevail. — *LORD ELLENBOROUGH C. J.* As a general proposition, I should say that the granting of a writ which has for its object a reversal of the order of proceeding at the Quarter Sessions, according to the rules of practice which there prevail, is not a jurisdiction which, if the Court possess, it will be inclined to exercise, unless it be apparent that gross injustice will follow the refusal of the writ. Now here the appellant did not dispute that he was rateable, but only the amount of the rate; and it is complained against the justices at Sessions that, in conformity to their practice, they called on him to begin and make good his allegation that he was over-rated. The appellant says that this was impossible; but he has not shown why, nor even now ventures to state to us that he was really over-rated; so that he stands merely upon the irregularity of the rule of practice; as to which it is urged that the Sessions have not proceeded according to what is thought to be, and perhaps may be, a more convenient rule. But if under such circumstances this Court were to interpose, I am apprehensive that we might be attracting to ourselves a most inconvenient

jurisdiction. It would come to this, that wherever the practice at the different Sessions should happen to vary we should be called on to decide between them.—BAYLEY J. This is a question touching the regularity of the order of proceeding at the Quarter Sessions. I do not see that the practice complained of is so inconvenient as alleged; and if the Court were to interfere in this instance we should have to grant a mandamus upon every occasion where the Sessions proceed according to a rule of practice which we may not think the most convenient.—ABBOTT J. It would be a dangerous precedent if we were to grant this writ upon the cause alleged. In general, a mandamus to the justices to hear proceeds upon the statute; this writ is asked because of some supposed error in practice.—HOLROYD J. I am of the same opinion. The case of *Rex v. Topham* (a) not only differs from this in the points stated for the opinion of the Court, but the decision also proceeded upon the special circumstances of that case. At the conclusion it was stated that the question made at the Sessions was, Whether the appellant should begin by proving his case that he was over-rated? or, Whether the parish-officers should begin by proving a probable case for rating the appellant at so much? And the Court observed that they would have no difficulty in dealing with that proposition when it should come nakedly before them. So that it clearly appears the Court did not consider that they were determining the simple question in that case.—Rule refused.

(a) *Ante* pl. 298.

304. *Rex v. Suffolk*, T. T. 58 G. 3. 1 B. & A. 640.—S. had obtained a rule for a *mandamus* to the justices of *Suffolk*, to cause continuances to be entered, upon the appeal of W. S. against four rates, dated respectively, 21st September 1817, 19th October 1817, 16th November 1817, and 14th December 1817, for the relief of the poor of the town of S.; and also against an order made at the General Quarter Sessions of the peace, held in and for the said town of S., and the liberties thereof, on the 16th of January 1818. By a local act passed in the reign of Queen Anne, the management and relief of the poor of the borough of S. were vested in certain persons, who for that purpose were made by the act a corporation, and who were empowered to make rates and assessments, and an appeal was given against any such rate or assessment to the party aggrieved by it, first to the justices of the peace of the town of S., at their General Quarter Sessions of the peace, next after the making and demanding the same, or at any other Sessions to be held for the said town and liberty, who were thereby authorised to make such order therein as to them should seem just. And, 2dly. By the same act a further appeal was given against the rate to such person or persons who should not think fit to abide by such order so made by the justices of the said town to the justices of the peace for the county of S. at their next General Quarter Sessions of the peace, who were then authorized to make a final order therein. At the January Sessions for the town of S., S. instituted his appeal against the four rates above-mentioned, and he then stated in his notice four grounds of appeal. The borough Sessions having determined against him he appealed to the Quarter Sessions for the county of S., and on this occasion he inserted two additional grounds of appeal in his notice. When the case came

By a local act the management of the poor of a town was vested in certain persons who were empowered to make rates, and an appeal was given to the party aggrieved to the town Sessions against every such rate, and a further appeal if required to the county Sessions. An appeal against four rates being entered at the January town Sessions, four grounds of appeal were specified in the notice; the party being dissatisfied made a further appeal to the county Sessions, and two other grounds of ap-

peal were added, the fourth being that the party was rated in respect of his lands in a higher proportion than all the other inhabitants mentioned in the rate : Held, first, that one appeal against the four rates was sufficient; secondly, that it was not necessary to give notice of appeal to all the inhabitants named in the rate; and thirdly, that the appellant must at the county Sessions be confined to the original grounds of appeal at the town Sessions.

on to be heard it was objected, that he had not given sufficient notices within the statute of 41 G. 3. c. 23. § 6. For the fourth ground of appeal in his notice was, that he was rated and assessed for and in respect of his lands, tenements, &c., in a greater and higher proportion than all the other inhabitants and occupiers, whose names were mentioned and inserted in the said rates. This, therefore, made it necessary to give notice to those persons, they being interested in the appeal. The Court of Quarter Sessions were of this opinion, and refused to hear the case further. It appeared from the affidavits, that sufficient notice had been given to the persons who had made the rates in question, under the authority of the local act; and that the number of the other persons mentioned in the rate amounted to about 364 individuals.—BAYLEY J. The first objection made is, that the party has entered one appeal against four distinct rates, which, as it is contended, it was not competent for him to do. Now the act which gives the appeal states, that a party who may find himself unequally taxed or assessed may appeal against *any* such rate or assessment. It does not say, that he must appeal against that rate *per se* without joining it with the others, which being monthly, may have been made in the interval between one Sessions and the next. The joint appeal may then be considered as a separate appeal against each rate, and if the Sessions should be of opinion, that injustice would be done by hearing the appeal against the four rates jointly, they might determine them separately, but they are not bound to do so. The party, therefore, may legally appeal against these four rates in the manner adopted by him in the present case. Then it is suggested, that the notice is objectionable. It contains six grounds of appeal, the fourth of which is, "that the appellant is rated for his premises in a greater and "higher proportion than all the other inhabitants and occupiers, "whose names are mentioned in the said rate." It is contended, that this made it necessary to give notice to all those other inhabitants and occupiers, amounting in the whole to the number of 364 persons. But that is not necessary. The statute 43 G. 3. c. 23. first gave to the justices the power of amending the rate appealed against, instead of altogether quashing it, but required the grounds of appeal to be stated, and notice to be given to the parties affected by the appeal. So, where the ground is that A, B, or C, are under-rated, it would be necessary to give notice to those individuals; but where the ground of complaint is, that the party appealing is over-rated in respect of all the rest, then it would not be necessary, because the alteration sought is the diminution of his assessment only, and the rest of the rate remains entire. Then, as to the other point, that the party here has inserted in his second notice two fresh grounds of appeal, the impression on my mind is, that he must, at the county Sessions, be confined to the same grounds of objection to the rate as he took at the borough Sessions, for the former Court is in the nature of a Court of review, and it is their duty to examine if the rate can be supported on the grounds decided upon by the Court below. If that were not so, it would be open to the party at the borough Sessions to state any illusory grounds of appeal, and to put forth his whole strength by surprise at the county Sessions. The clause, therefore, which directs that the party,

if dissatisfied with the decision of the borough magistrates on his case, may have his further appeal to the justices of the county of S., must by fair construction of law be taken to give a further appeal, but only on the same grounds as were taken by the borough magistrates. This objection, however, only goes to a part of the notice, and as the justices have wrongly decided, in refusing altogether to hear the appeal, the rule for the *mandamus* must be made absolute. — ABBOTT J. I entirely agree in what has fallen from my brother Bayley on the two first points, and I think also, that the party can only enter into the same grounds which he took at the borough Sessions. The rule, therefore, should be amended and made absolute for a *mandamus* to the justices to hear the appeal against the three rates on the first, second, fifth, and sixth grounds of appeal. — HOLROYD J. I am of the same opinion. The county Sessions are to re-try the same matters which were triable at the borough Sessions. In all cases of new trials or of error the Court of appeal looks only at the original proceedings. There may, however, be fresh evidence adduced. The notice of the appeal is in the nature of a declaration, and must be the same on both occasions. Then the appeal to the county Sessions must here be confined to the original matter of complaint only. — Rule absolute for a *mandamus*, to hear the appeal on the first, second, fifth, and sixth grounds.

X. Of certiorari.

305. *Rex v. Uttoxeter*, E. T. 5 G.1. MSS. — Upon great deliberation it was held, that a *certiorari* does not lie to remove the poor's rate itself, the remedy being by appeal or by action when a distress is taken: this will answer all the ends of justice in coming at an equal rate: whereas if the rate itself should be sent up, great inconveniencies to the poor and delays will follow. It was also adjudged, that the rate was not removeable, being only evidence of an assessment, and the allowance of two justices a ministerial act.

142. in notes. Foley, 33. Hard. 117. — And see *Rex v. Lediard*, Sayer, 6. and Cald. 309. that a *certiorari* will not lie for other than judicial acts.

306. *Rex v. Justices of Shrewsbury*, E. T. 7 G.2. Str. 975. — Upon appeal to the Sessions the poor's rate was quashed, and the Sessions made a new one. — STRANGE moved for a *certiorari* to remove this new rate, because here they could have no appeal, which was one reason given in the case of *Uttoxeter*. But THE COURT said, that was not the only reason they went upon, and denied the *certiorari*. — THE CHIEF JUSTICE. The true objection against a *certiorari* is, that if poor's rates were removeable, the poor might be starved while the rates were depending here; and therefore the Court, from the great inconvenience that would attend the removal of rates, have refused to do it, and no instance can be produced that such a *certiorari* ever stood. — The rule was discharged.

T. R. 235., where, for the same reason, the Court refused to grant a *certiorari* to remove the assessments of the land tax.

307. But a *certiorari* will lie to remove AN ORDER of justices of the peace, &c. even in cases where they are empowered by statute usually to hear and determine; for the Court of King's Bench

A poor's rate cannot be removed by *certiorari*.
S. C. Str. 932.
2 Kel. 117.
pl. 97.
1 Bar. K. B. 443. 1 Sett. Cas. 150. 3 Doughton Elections, *Rex v. Lloyd*,

For if a poor-rate could be removed, the poor might be unprotected for while the question was depending.
2 Bar. K. B. 272. 1 Sess. Cas. 253.
2 Keb. 246.
See *Rex v. Fisher*, Say. Rep. 160. and *King v. King*, to remove the assessments of the land tax.
But a *certiorari* will lie to remove orders respecting a

poor's rate.
 3 Mod. 229.
 1 Salk. 145. 148.
 Ld. Ray. 469.
 2 Hawk. P. C.
 408.
 3 Burr. 1458.

Rex v. Borough
 of Warwick,
ante, pl. 69.

having a superintendency over all courts of an inferior criminal jurisdiction, may in the plenitude of its power award a *certiorari*, unless restrained by the express negative words of the legislature. Therefore, although the 43 *Eliz. c. 2. § 6.* ordains, that the justices of peace in their Sessions shall take such order upon the appeal of any party aggrieved by a poor's rate as to them shall be thought convenient, and the same to *conclude* and bind all the parties; and the 17 *G. 2. c. 38. § 4.* directs that the said justices shall receive such appeal, and hear and *finally* determine the same; yet a *certiorari* to remove their ORDERS made thereon will lie (a); and therefore on appeal from a poor's rate, where the Sessions *ordered* the churchwardens to produce the books at an adjourned day, before which a *certiorari* was brought to remove that order, it was held to lie, though the appeal was depending; else *the order* must be obeyed before the validity of it can be determined.

(a) See the cases upon the subject of removing orders of justices, vol. ii. and Sparrow, 2 T. R. 196. notes, *Cates v. Knight*, 3 T. R. R. 442. and *Rex v. Jukes*, 3 T. R. 542.
 also *Rex v. Moreley*, 2 Burr. Rep. 1042.
Rex v. Eaton, 2 T. R. 89. *Rex v.*

CHAPTER III.

OVERSEERS' ACCOUNTS.

- I. *The Statutes relating to Overseers' Accounts.*
- II. *Of the making up, Delivery, and Allowance.*
- III. *Of the Appeal, and Jurisdiction of the Sessions.*
- IV. *Of the Payment of the Balance.*

I. *The Statutes relating to Overseers' Accounts.*

See Stats. 43 Eliz. c. 2. § 2. 4. 9 G. 1. c. 7. § 2. 17 G. 2 c. 38. § 1, 2, 3. 11. 41 G. 3. c. 23. § 9. 50 G. 3. c. 49.

II. *Of the making up, Delivery, and Allowance.*

308. **R**EX v. Peake, M. T. 15 Car. 2. 1 Keble, 574. — The churchwarden was committed for refusing to account for all monies received and disbursed by him, and for such things as concerned his office; but upon a *habeas corpus* he was discharged; for if he be committed as OVERSEER, it must be so expressed in the *mittimus*, although the office of *overseer* is annexed to the office of *churchwarden*, for the justices have no power over him as churchwarden.

The commitment of an overseer for not accounting must state the party to be overseer.

309. *Case of the Mayor and Churchwardens of Northampton, T. T. 2 W. & M. Carth. 152.* — The mayor committed the churchwardens for refusing to account before him (a). The commitment was by a warrant concluding, "until they be duly discharged according to law." — THE COURT held, that the warrant ought to have concluded, "there to remain until they shall account." There is a difference in the cases where a man is committed as criminal, or for contumacy in refusing, as in this case, to do a thing required. In the first case, the commitment must be, "until discharged according to law;" but in the latter case, "until he comply and do the thing required of him;" for in that case he shall not lie till the Sessions, but shall be discharged on performing his duty; therefore the churchwardens were discharged by rule of Court.

The commitment must conclude, "thereto remain until they shall account." Carth. 291. Comb. 390. 5 Mod. 308. Salk. 348. 3 T. R. 3.

310. *Rex v. Corrocke, E. T. 4 W. & M. Shower, 395.* — The defendant was committed by two justices of the peace by warrant, reciting, that he, being an *overseer*, had appeared before them, and being required to give a just and true account of all such monies as had been received and paid, he only produced an account in gross of his receipts and payments, and refused to give a particular account, or to produce his books by which he received the monies on rates assessed, &c. and also a particular account to whom he

The commitment is illegal if it state that "an account" was tendered, although the account was not satisfactory.

(a) The spiritual court may compel churchwardens to deliver in their accounts; but when this is done there is an end of the jurisdiction of that court, and therefore if they proceed to decide on the propriety of the charges, or take any steps after the accounts are delivered in, the superior court will grant *prohibition* even after sentence. *Leman v. Gaulty, H. T. 29 G. 3. 3 T. R. 3.*

had paid such money charged in gross; therefore they believed such an account to be no account, according to the 43 *Eliz. c. 2.*; and the said defendant having refused to give any other account, they therefore commit him till he shall make a true account before them, or two other justices. He was discharged upon *habeas corpus*, because the justices had no authority to commit in this manner by the statute 43 *Eliz. c. 2.*, for that an account was confessed to have been tendered, &c.

Under the 43 *Eliz. c. 2.* overseers accounts are to be delivered to two justices, and not to the succeeding overseers. 5 *Mod.* 179. 420. 6 *Mod.* 77. 97. *Salk.* 484.

The authority of the justices cannot be delegated.

Overseer not to be committed for not giving up his accounts within the year, nor unless it be shown that he hath not accounted before any other justices.

Justices cannot commit overseer for an objectionable account.

A *mandamus* will lie against the old overseers to compel them to deliver their public books and papers to their successors,

Justices may fine overseers.

A *mandamus* to swear an overseer to his accounts accord- to 17 *G. 2. c. 38.* is of course.

311. *Anon. H. T. 10 W. 3 Salk.* 525. — A *mandamus* was granted to the justices of peace on 43 *Eliz. c. 2.*, commanding them to compel the precedent overseers of the poor of the parish of *A.* to come to an account with the present overseers. This writ was now quashed. FIRST, For that the account by the 43 *Eliz. c. 2. § 1.* is to be given to two justices, and not to the succeeding overseers. SECONDLY, Two of the persons named in the writ, whom the justices were to compel to come to account, did not appear to have been overseers.

312. *Rex v. Turner, E. T. 9 Ann. Vin. Abr.* 415. — The authority of the justices under 43 *Eliz. c. 2. § 2.* in stating the overseers' accounts at the end of the year cannot be delegated to any other.

313. *Rex v. Gibson, E. T. 1 G. 1. Foley,* 20. — The defendant was committed to *Newgate* by two justices for not giving up his accounts. It was objected, that it appeared to be a commitment within the year, and that the act 43 *Eliz. c. 2.* does not direct any commitment till after the year; and also, that the justices only say that he had not accounted before them, whereas he might have accounted before other justices, which would have been sufficient; and both objections being allowed, he was discharged upon entering into a recognizance to appear at the next Sessions in order to account.

314. *Walrond's case, Devon, Lent Assizes, 1719.* — It was resolved by *King C. J.*, that the justices cannot commit an overseer for bringing in an account to which they object, but that they ought to hear it, strike out what is amiss, and balance the account.

315. *Rex v. Bletshow, M. T. 7 G. 2. EDITOR'S MSS.* — A *mandamus* had been moved for to the defendants, who were overseers of the parish of *St. G.*, to deliver up all the public books and papers in their custody to *A. B.* — PAGE J. I do not see how the poor can be relieved unless the succeeding overseers can have an opportunity of informing themselves how the money raised for their relief hath been disposed of, which can only be by receiving the accounts of their predecessors for the purposes of inspection. — PROBYN and LEE J. concurred, and the rule for the *MANDAMUS* was made absolute.

316. *Rex v. Sedgewold, 10 G. 2. MSS.* — [IT WAS RESOLVED, that justices may fine overseers, as well as imprison them, for refusing to account.

317. *Rex v. The Justices of Middlesex, H. T. 19 G. 2. 1 Wils.* 125. — STRANGE moved for a *mandamus* to be directed to the justices of the peace to swear *C.*, late overseer of the poor of the parish of *St. A.*, to the truth of his accounts, upon an affidavit made by *C.* that he had delivered in an account to the justices, and was ready to swear to the truth thereof, according to the

statute of 17 G. 2. c. 38., but that they had refused to swear him to it. — **WRIGHT J.** This Court hath two jurisdictions over justices of peace: 1st, To punish and restrain them when they exercise a jurisdiction which they have not. 2dly, To compel them by *mandamus* when they refuse to do what they by law ought to do. This motion is founded on the statute 17 G. 2. c. 38., which requires the justices to do a thing which they have refused to do. If the justices apprehend that this statute has not repealed the statute 43 Eliz. as to the overseers' accounts, they may return that matter upon the *mandamus*, and then they will have the judgment of the Court, whether they are obliged to swear C. before he has accounted according to the statute 43 Eliz. c. 2.; but we cannot refuse to grant the *mandamus*, for it is a motion of course. — **DENISON** and **FOSTER** of the same opinion, that it was a motion of course. — *Mandamus* granted.

See *Rex v. Coode*, ante, pl. 290.

318. *Rex v. Clapham*, T. T. 24 & 25 G. 2. 1 Wils. 305. — A *mandamus* was granted to oblige the old overseer of the poor to deliver over the books of the poor's rates to the new overseers; for, *PER CURIAM*, they are public books, and ought to be delivered over by one overseer to another, that all the parishioners may have access to them; and the overseer and churchwarden for the time being ought to have the custody thereof.

The old overseers must deliver the books of rates over to the new overseers.

319. *Rex v. Goodcheap*, H. T. 35 G. 3. 6 T. R. 159. — **T. W.** appealed against the defendant's accounts as overseer of the poor of the parish of *St. M.*; the Sessions amended the account, and stated the following case: At *Easter* 1788, *J. G.* was duly appointed overseer, at *Easter* in the several years 1789, 1790, and 1791, he was again appointed one of the overseers of the parish, and continued in the office those four successive years. At *Easter* 1792, *E.* and *S.* were appointed overseers; and *S.* becoming insolvent about three weeks after his appointment, *G.* was again appointed in his room for the remainder of the year ending at *Easter* 1793. *S.* while he was overseer neither paid any money for the use of the poor nor made any rate. During the four first years, beginning at *Easter* 1788 and ending at *Easter* 1792, *G.* did not make out any account as overseer, or at any time after the expiration of any of those years, pursuant to the statute. At the expiration of the last year, ending at *Easter* 1793, he made out one general account, as overseer for the four successive years, ending at *Easter* 1792, and for that part of the year in which he served the office ending at *Easter* 1793; which account was allowed by two justices, and upon that allowance a balance of 9*l.* 1*s.* 1*d.* appeared to be due to the defendant. An appeal was lodged at the *Midsummer* sessions 1793, being the next sessions after the allowance of that account, and was adjourned to *Michaelmas* Sessions following. During the four years ending at *Easter* 1792, *G.* expended the sum of 232*l.* and 9*½d.* for the use of the poor; namely, for the year commencing at *Easter* 1788, 84*l.* 18*s.* 11*½d.*; for the year commencing at *Easter* 1789, 48*l.* 19*s.* 1*½d.*; for the year commencing at *Easter* 1790, 64*l.* 13*s.* 4*d.*; for the year commencing at *Easter* 1791, 33*l.* 9*s.* 4*d.* and was not reimbursed the same or any part thereof. Four rates were made for the relief of the poor previous to *Easter* 1792, three of which were quashed upon appeals, and the other was confirmed upon an appeal, but omitted to be collected by *G.* on account of the rate

The accounts of an overseer should be settled at the end of the year; for, although the same person be appointed overseer for four successive years, he cannot make a rate in any one year to reimburse himself the monies expended during any preceding years. See *Rex v. Mayor of Gloucester*, ante, pl. 114.

being informal. After the defendant was appointed an overseer for the part of the year ending at *Easter* 1793, two rates for the relief of the poor were made and collected by him, namely, one at 8s. in the pound, and the other at 5s. in the pound, out of which he reimbursed himself the money he expended for the four successive years ending at *Easter* 1792, and the remainder of the year ending at *Easter* 1793, by charging the same in the account appealed to. The Sessions determined that the defendant could not legally insert in his account the expences of the four successive years ending at *Easter* 1792, but only the expences of the time when he was in office in the year ending at *Easter* 1793, and they ordered the account to be amended accordingly. — LORD KENYON C. J. As to the law, it is impossible to raise a doubt about it; the overseers ought not to include in their accounts charges for several years, but all the items of the accounts should be confined to that year when the accounts are directed by the act to be passed; otherwise, as the inhabitants of a parish are a fluctuating body, the present inhabitants would be burdened with the expences of their predecessors. — Order of Sessions confirmed.

Where a party applies for a *mandamus* to compel churchwardens to allow him to inspect their accounts according to the directions of the 17 G. 2. c. 38. he must state some special reason for which he wishes to see the accounts. It is no answer to the application that the statute imposes a penalty upon a churchwarden improperly refusing the inspection.

320. *Rex v. Clear*, M. T. 6 G. 4. 4. B. & C. 899. — A rule nisi had been obtained for a *mandamus* directed to the defendants, churchwardens of the parish of B., commanding them to permit J. Puttock, an inhabitant of the parish assessed to the relief of the poor, from time to time, and at all reasonable times, to inspect the accounts of the churchwardens and overseers of the poor of the said parish for the years ending respectively at *Lady-day* 1821, 1822, 1823, and 1824, the said J. P. paying, &c. as required by the act. The affidavit of P. stated that he had frequently applied for leave to inspect the accounts, and had offered to pay for the same, but had been refused: he did not, however state any reason for which he desired to make the inspection. — BAYLEY J. The right of inspection given by the 17 G. 2. c. 38. is not general but for the remedy of the evils contemplated by the statute. The applicant should therefore have shown some ground for desiring to inspect the books, and for want of such statement, I think that this rule must be discharged. It is no answer to the application that in a subsequent clause a penalty is imposed that is not given by way of compensation to the party grieved, but it is imposed for the relief of the poor and to punish the offender. — HOLSBORN J. In *Com. Dig. Mandamus* (A), it is stated that the writ of *mandamus* is granted to prevent failure of justice, and for the execution of the common law, or of a statute, or of the King's charter, but not as a private remedy to the party. The applicant not having stated the grounds upon which he desires to inspect the books, has not brought himself within that rule for granting a *mandamus*. His right as a parishioner is a mere private right for which the Court will not grant it. The penalty indeed is not such a specific legal remedy as would prevent our interference, but inasmuch as I think the party should have pointed out some public ground for the Court to proceed upon, and has not done so, this rule must be discharged. — LITLEDALE J. concurred. — Rule discharged.

III. Of the Appeal and Jurisdiction of the Sessions.

See Stats. 43 *Eliz.* c. 2. § 4. 17 G. 2. c. 38. § 4, 5. 41 G. 3. c. 23. § 4.

321. *Moulsworth's case.* T. T. 5 W. & M., Comb. 287. — An overseer charged the parish with 3*l.* for putting out an apprentice, and his accounts were allowed by two justices; but, in fact, the apprentice never was put out. Upon complaint to the Sessions, they ordered that the late overseer should repay the money so fraudulently obtained, with costs, &c. — EYRE J. This order cannot be maintained: the Sessions have no jurisdiction; but there may be another remedy by indictment.

322. *Rex v. Hedges*, M. T. 4 Ann. 2 Salk. 539. — Upon appeal to the parish from the allowance of overseers' accounts, the justices at the Sessions, if they see reason, may disallow the accounts of the overseers, and order them to pay a certain sum over, which they judge to be in their hands; but if they refuse to do so, they cannot imprison them directly, but must, agreeably to the 43 *Eliz.* c. 2. § 4., levy the arrears by distress and sale, and in default of distress commit him; for the justices in Sessions must execute their judgment in the same manner as the two justices must do.

323. *Rex v. Townsend*, H. T. 10 Ann. EDITOR'S MSS. — The defendants having been appointed overseers, laid their accounts before two justices of the peace, but before the said two justices had either allowed or disallowed the said accounts, or had in any manner proceeded to examine them, the defendants laid the said accounts before two other justices, who immediately allowed them. On an appeal against these accounts, the Sessions ordered the defendants to account before the two first justices. On a motion to quash this order of Sessions, it was contended that the Sessions have only power to determine the dispute finally, so that if the allowance of these accounts had not been good, they should either have set them totally aside, or have confirmed so much of them as was good and set aside the rest; but that here they had only referred the overseers back to the two first justices, without assigning any error or fault in the allowance by the other two justices. — PARKER C. J. By the 43 *Eliz.* c. 2. the overseers have four days after their year to apply to any justice they please to pass their accounts, and within which time they cannot be summoned before any justice; but when the accounts are once laid before any justice, either by themselves or by the parish after these four days, no other justices can then meddle with them, and if they do, any allowance or disallowance by such justices is void. The words of the 43 *Eliz.* c. 2. § 4. are, that the Sessions "shall make such order therein as to them shall be thought convenient;" and therefore they need not finally determine the dispute; and the reason is plain, for they cannot allow the accounts themselves, and therefore it is necessary that they should remit them with their observations to those that had the just cognizance. They do not, by doing this, delegate any authority to such justices, but only desire them to execute their own authority; and therefore it differs from the case where the Sessions refer any thing and give an authority to the referee. This indeed they cannot do; but here the Sessions could not take it out of the hands of the first justices; and if such justices make an unreasonable delay in passing the accounts, the party may apply to this Court to hasten

The Sessions cannot, on an appeal, from the allowance of the accounts, order the overseers to refund monies improperly charged.

But they may order the overseers to pay over such balance as appears to them to be due. Salk. 525. 6 Mod. 77. 97.

Or may refer the accounts to the first two justices, to whom they were submitted, though they have been allowed by other justices. S. C. Viner, 417.

See 17 G. 2. c. 38. 1. 4

them, which is his only remedy. — The order, however, was quashed, because it was stated to have been made upon the hearing of S., one of the justices, and did not state that the parties had been heard; and it was agreed that two justices, none of the four before concerned, should be named by the Court to audit the accounts.

The time of appeal was unlimited by the 43 Eliz. See *Rex v. Justices of Berkshire*, *post*, pl. 327.

On appeal to the Session, overseers' accounts must appear on the face of the order to have previously been before two justices under 43 Eliz. c. 2 § 2. (a) See *Rex v. St. Chad in Shrewsbury*.

(b) *Salk.* 471.

324. *Rex v. Bowin*, *E. T.* 5 G. 1. *Sett. Poor*, 111. — The defendant was overseer, and, several years after his accounts had been allowed and confirmed, the parish appealed against his accounts. — *PER CURIA*: The statute being silent as to the time, the parish may appeal at any time.

325. *Rex v. Bartlett*, *T. T.* 7 G. 2. — The Sessions ordered that the several sums, amounting in the whole to ———, be struck out of the disbursements; and that *B.* and *D.*, late churchwardens and overseers, do pay to the present overseers 11*l.* 5*s.* First exception, The appeal was lodged at a former Sessions; and as it does not appear when they were held, it might be an illegal day (a), and the Court will not intend that the Sessions were held on a right day, unless that appears. Second exception, It does not appear that the appeal was adjourned; and if not, the justices cannot proceed *de novo*, every new Sessions being in nature of a new court. Third exception: The disbursements of the churchwardens are not a proper subject of enquiry at Sessions: but taking them as overseers, they ought first to have gone before two justices of the peace (b): they cannot begin at the Sessions by 43 Eliz. c. 2. Fourth exception: The order is on two persons, when a payment by any one would have been sufficient. Fifth exception: The act says, the churchwardens and overseers are to pay to the succeeding overseers; but here the overseers for 1731 are passed over. Sixth exception: The subject-matter is by no means inquirable at the Sessions; this money arising out of the parish stock, application should have been made in Chancery for a commission of charitable uses, it not appearing that all this stock was levied by a tax under 43 Eliz. c. 2. — On the other side. *FAZAKERLY*: First, The parties may appeal to any Sessions, and are not confined to the next (c); therefore all that strictness is not necessary, as when the appeal can be only in the next. It is plain here was a Sessions, and it is the express allegation of the order that there was a Sessions. Secondly, The adjournment did not appear: indeed, when there would be a discontinuance, it is necessary to state a regular adjournment; but here the justices are not bound to determine at the next Sessions. Thirdly, churchwardens are made overseers by 43 Eliz. c. 2. § 6., and as to the going before two justices, it is to be presumed they did. Besides, the 43 Eliz. c. 2. § 6. gives an appeal from an act done, be it by the churchwardens or other persons, or by the said justices; so that being in the disjunctive, there is no need of going before two justices at all. Fourthly, The order must be made to all; for all constitute but one officer, and payment to one is payment to all; and as to the persons to pay, they are all jointly required, and the payment by one is a discharge of all, and therefore the order is proper upon them all. It is every day's practice to give judgment against all jointly. Fifthly, I agree they ought to have paid to the next succeeding overseers; but as they have not done their duty till the trust is determined, they ought to pay it to the next. Sixthly, It does not appear there is any parish stock besides what arises from

(c) See *vide* 17 G. 2. c. 38. § 7. *Rex v. Coode*, *ante*, pl. 290. *Rex v. Micklefield*, *ante*, pl. 291. and *Rex v. Atkins*, *ante*, pl. 293.

43 *Eliz. c. 2.*; and the Court will not presume there is. — LORD HARDWICKE C. J. All the exceptions but one have received answers, viz. that touching the jurisdiction of justices at the Sessions, as to the continuances; and I do not think that the justices are bound to make formal entries of them. As to the holding of the former Sessions, we are not to presume it to be held at a wrong day; and it is well enough to say, that it was done at the last General Quarter Sessions, and if you had any objection you might have removed the former order; it is like the case of exception to the recitals of original writs, which cannot be taken advantage of unless the original is returned by *certiorari*. As to the payment by and to all, it is well enough: as to the succeeding overseers, that too is not amiss. As to the sixth exception, it is answered; but I am not satisfied as to the not going before two justices at first: the words must be taken respectively and distributively, therefore it should be shown the matter had been originally before two justices; all that is here said is, that it is an appeal from the disbursements, and from the allowance thereof; but it does not appear where allowed, nor does the word "allowance" sufficiently show it to have been before two justices, as Mr. Noel contends. — PAGE J. Whenever an act gives an appeal, you cannot come to the Sessions first. The question is, therefore, Whether that is supplied by the single word "allowance?" It may be an allowance by the parish; so that it does not necessarily import the allowance of two justices, to whom you must go before you can go to the Sessions. — LEE J. I should be glad to look into 43 *Eliz. c. 2.* If going before two justices is necessary, then to appeal without going before them is ill; but it is not very clear with regard to the jurisdiction of the two justices. There is a recital of an allowance; now Mr. Noel's case (a) is of an improper allowance, which is no allowance of the justices. — Afterwards LORD HARDWICKE delivered the opinion of the Court, that this matter ought to have come to the Quarter Sessions by appeal from two justices, and that the Quarter Sessions cannot take it up originally. If authority be given to two justices to do an act, and no appeal is given, then it may commence at Sessions; but if an appeal be given, then it cannot be begun at Sessions.

(a) *Rex v. Hedges*, ante, pl. 322.

See 2 Str. 983.

326. *Rex v. Whitear*, M. T. 3 G. 3. 3 Burr. 1365. — An original order was made at the Quarter Sessions, purporting to be an order made upon the appeal of the present overseers, directing their predecessors, the late overseers, to pay over to the appellants, the present overseers, the balance of their accounts, which accounts were settled and balanced by the said order of Sessions. Exception was now taken to the jurisdiction of the Sessions to make an order upon the late overseers to pay over money to their successors by an original order in the first instance, without any previous application having been made to two justices, pursuant to the directions of the 43 *Eliz. c. 2.* § 4. 6. To this it was answered by the counsel who attempted to support the order, that this order was not made upon the 43 *Eliz. c. 2.*, but upon the 17 G. 2. c. 38. § 4. But to this it was replied, that the statute of 17 G. 2. c. 38. does not give power to apply to the Sessions *per saltum*, to make such an order as this; but that the previous application to two justices remains as necessary as before. — THE COURT was of the same opinion, and that the 17 G. 2. c. 38. made no alteration in

So also a previous application to two justices is necessary on the 11 G. 2. c. 38. S. C. 1 Black. Rep. 395.

this respect, but had quite another view. — The order was quashed.

The appeal against the allowance of overseers' accounts under the 17 G. 2. c. 38. must be to the next Sessions.

327. *Rex v. Justices of Berkshire, H. T. 10 G. 3.* — Rule for a *mandamus* to the justices of Berks, to proceed in an appeal against the accounts of A. B., late overseer of the parish of C. The appeal was by A. the present overseer, for himself and the rest of the parish. The question upon showing cause was, Whether an appeal from an overseer's account, verified and allowed according to the directions of the 17 G. 2. c. 38. must be to the next Sessions after the allowance, or may be to any subsequent Sessions? But it appeared from the affidavits, that the late overseer A. B. had been very severely treated by the justice upon whose affidavit this rule had been granted; he had been committed by him for not accounting according to the statute; and when it appeared that his accounts had been allowed by another justice before this commitment, an appeal was lodged, &c. — LORD MANSFIELD said, he had seldom seen a case of greater oppression; and having stated the affidavits to prove it, observed, that this rule was obtained upon the affidavit of Edmond Cook, the very person who committed the overseer for not accounting according to the directions of 17 G. 2. c. 38.; and therefore he shall not be permitted to say, that the appeal may be on the 43 Eliz. c. 2. On account of the gross oppression, the rule ought to be discharged with costs. — YATES J. This was no account at all under the 43 Eliz. c. 2.; and therefore, if the parish thought proper to proceed against the overseer upon that statute, they should not have appealed, but should have proceeded against him as for not accounting. I am very clear that the appeal should have been to the next Sessions. (a) — WILLIS J. of the same opinion. — Rule discharged with costs.

Objection may be made to overseers' accounts before appeal; for the inhabitants are aggrieved as soon as the money is assessed. S. C. Cald. 507.

328. *Rex v. Micklefield, H. T. 25 G. 3.* EDITOR'S MSS. — The Sessions, on appeal, quashed a poor's rate assessed for the purpose of reimbursing overseers for the expence of law proceedings. On a case reserved for the opinion of the Court of King's Bench a preliminary objection was made, that this was not the proper stage for the appellants to make their opposition, but that they should have waited and appealed against the overseers' accounts. — THE COURT agreed the objection might have been taken to the overseers' accounts, but that it was also proper now, for that the inhabitants were aggrieved as soon as the money was improperly assessed upon them, without waiting till it was raised and expended. But the order of Sessions was quashed, because the appeal was not to the next Sessions subsequent to the publication of the rate.

Where overseers' accounts were not allowed until the last day, when an effectual notice of appeal to the then next Sessions could have

329. *Rex v. Justices of Dorsetshire, H. T. 52 G. 3. 15 East, 200.* — C. obtained a rule in the last term, for a *mandamus* to the defendants, commanding them to enter continuances to the then next General Quarter Sessions, upon the appeal of C. D., against the allowance of the account of W. G., as overseer of the poor of the parish of H. T., in S., and at such Sessions to hear and determine the matter of the said appeal. The rule was

(a) See the cases of *Rex v. Coode*, ante, pl. 290. *Rex v. Micklefield*, ante, pl. 291. and *Rex v. Atkins*, ante, pl. 293. where it is now settled, that an appeal against a poor's rate must be to the Sessions next after the publication of the

rate; and as the appeal against an allowance of overseers' account is given by the same clauses of the two acts, the Editor presumes the decision on the former will govern the latter subject

obtained on the affidavit of *C. D.*, which stated the appointment of *G. and B.*, as overseers in 1810; that soon after *May* 1811, when they ceased to be overseers; the account of *G.*'s receipts and payments, as overseer, was submitted to the magistrates of *S.*, at their special Sessions holden for that purpose, for their allowance of the same, when *C. D.* objected to certain items in that account, and stated, that if they were allowed, he should appeal against the allowance; and thereupon the justices refused the allowance of the said account, but did not strike out the items objected to, alleging that the stat. 50 G. 3. c. 49. was not imperative upon them, but only authorized them to examine the accounts of overseers if they thought proper. That on the 8th of *July* last, and not before, the said account was verified on the oath of *G.* before two magistrates of the borough, and by them allowed; and that the said 8th of *July* was the last day permitted by the practice of the Sessions for giving notice of appeals to the then next Sessions, which were holden in the same month of *July*; and that the items objected to still remaining in the account, *B.* gave notice of appeal against such account and allowance to the next subsequent Sessions, holden on the 8th of *October*; at which Sessions of justices, conceiving that the deponent ought to have appealed at the former Sessions, dismissed the appeal on that account.—Against the rule it was contended, 1st, That stat. 17 G. 2. c. 98. § 3. limited the time of appeal to the next Sessions, and was, in this respect, a repeal of the stat. 43 *Eliz.* c. 2. § 6, which gave an appeal without any such limitation; and, 2dly, That the appellant should have entered and tried, or at least have entered and respite his appeal at the *Midsummer* Sessions, and cited *Rex v. Coode* (a), *Rex v. Micklefield* (b), *Rex v. Atkins* (c), and *Rex v. Justices of Berks.* (d) — *C.* in support of the rule maintained, 1st. That the time for appealing in this case was not restricted by stat. 17 G. 2., to the next Sessions, on which point he relied on *Rex v. Ashburnham*, (e) 2 *Nol. Poor Laws*, 2d *Ediz.* 221. as decisive; and, 2dly, That the *Michaelmas* Sessions were in this case the next Sessions, the next Sessions meaning, as stated in *Rex v. Coode*, the next possible Sessions. — LORD ELLENBOROUGH C. J. It seems to the Court, that in every view of the case the *mandamus* should go; whether this be a proceeding under the stat. 43 *Eliz.* or under the stat. 17 G. 2.; for, supposing it to be under the stat. 17 G. 2., and supposing that statute in this respect to have repealed the stat. 43 *Eliz.* (which, from the cases cited, seems by no means to be settled) still, under the circumstances of this case, we think the *July* Sessions could not be considered the next Sessions for the purpose of appealing; for the allowance by the justices was on the 8th of *July*, the last day when any effectual notice of appeal could have been given; and it does not appear when the appellant had any notice of such allowance; and the transaction seems to carry with it marks of design to defeat the appeal.—*Mandamus* granted.

been given, and it did not appear when the party objecting had notice of such allowance:

Held, that a notice of appeal to the next subsequent Sessions, for which an effectual notice of appeal then next Session could be given, was good.

(a) *Ante*, pl. 290.

(b) *Ante*, pl. 291.

(c) *Ante*, pl. 293.

(d) *Ante*, pl. 327.

(e) *Ante*, p. 309. n.

330. *Lester's* case, *M. T.* 53 G. 3. 16 *East*, 374. — *C.* moved for a *habeas corpus* on the behalf of *W. L.*, late overseer of the poor of the parish of *P.*, who was detained in custody, under a warrant of commitment signed by two justices, for not delivering in his accounts to the succeeding overseers, within 14 days from the time of their appointment. The warrant of commitment

The 50 G. 3. c. 49. which requires the churchwardens and overseers to submit their accounts to two

justices at Special Sessions, to be holden within the fourteen days appointed by the 17 G. 2. c. 38. for delivering in the said accounts to the succeeding overseers, is not a substitution in lieu of that provision in the 17 G. 2., but is cumulative, and if the overseer refuse to deliver in such accounts to the succeeding overseers within the fourteen days, he may be committed by two justices for such refusal.

recited the appointment of *L.* as one of the overseers, and subsequent appointment of two persons to succeed him in that office, and recited also the 17 G. 2. c. 38., whereby churchwardens and overseers are directed, within 14 days from the appointment of their successors, to deliver in to their successors a just, true, and perfect account, &c. to be verified by oath, &c., and that it had been duly proved before them the justices, that *L.* had refused to make and yield up to his successors such account as aforesaid, *within the time therein before-mentioned, and limited or appointed for that purpose*; and then went on to direct that *L.* should be taken into custody, and detained until he should make and yield up such account verified as aforesaid.—It was contended, that the 50 G. 3. c. 49., which directs the accounts to be submitted to two justices, at a Special Sessions, within the 14 days appointed by the former act, was substituted in the place of the obligation to deliver them over to the succeeding overseers. By the 50 G. 3. the overseers who refuse or neglect to submit their accounts to the justices, are made liable to be committed; if, therefore, they have 14 days allowed them for submitting their accounts to the justices, how can they be required within that time to deliver them over to the succeeding overseers? The duty imposed by one act is inconsistent with and would interfere with the other.—LORD ELLENBOROUGH C. J. The provision in the 50 G. 3. seems rather to apply to the manner of examining the accounts when yielded, leaving the accounts still, as before, to be delivered over to the succeeding overseers; but they are also within the 14 days to be submitted to the justices for examination. An ulterior means is afforded of investigating them before the justices, the act only means that they shall be exhibited to the justices; it is, therefore, for a different object. It is very expedient, that the succeeding overseers should have the accounts delivered in to them immediately from the former overseers, which is the object of the 17 G. 2.; then the 50 G. 3. directs that the account, so to be delivered, shall be submitted to the justices to be examined and approved by them; that, therefore, is manifestly cumulative.—LE BLANC J. The churchwardens and overseers are to deliver in to the succeeding overseers their accounts, verified on oath before one or more justices, who are to sign and attest the same; that is provided for by the 17 G. 2. By the subsequent act the accounts are to be submitted to two or more justices at a Special Sessions; and the power is given them to examine and approve such accounts, and they are required to signify their approbation of them under their hands, and then to sign and attest as directed by the former act. This provision, therefore, is perfectly consistent with the provision in the former act.—Rule refused.

The Court will not upon removal of an order of Sessions allowing overseers' accounts, which is good upon the face of it, go into the merits of those

331. *Rex v. James, H. T. 54 G. 3. 2 M. & S. 321.*—A rule nisi was obtained in the last term for quashing an order of Sessions, allowing the accounts of the overseers of the poor of the parish of C., upon appeal against them by the defendants at the last Sessions. The order of Sessions was upon the face of it general, allowing the said accounts, and dismissing the appeal, and farther ordering that the appellants should pay to the overseers 40s. costs. The defendants, in their affidavit, on which the rule was obtained, disclosed several grounds of objection to these

accounts, that they contained charges of sums in gross as monthly payments, without stating the several items of expenditure which made up the gross amount, that they contained a charge for a salary to one of the overseers, &c. And now the rule coming on, ELLENBOROUGH C. J. interposed by inquiring if there was any objection to the order upon the face of it; for otherwise the Court would not go into the overseers' accounts upon affidavit. The Sessions was the proper forum for deciding such matters; the time of the Court would otherwise be absorbed in taking parish accounts. If there is likely to be a defect of justice, the remedy must be by application to the legislature, for the Court cannot enlarge the limits of its jurisdiction in order to supply a remedy. The Sessions have jurisdiction over these matters; if, on the removal of the record by *certiorari*, it had appeared to be erroneous, this Court would then have acted upon it. — *LE BLANC J.* In cases upon orders of removal, this Court does not hear affidavits of what passed at the Sessions, but we act upon the case sent to us. — *BAYLEY J.* The object of the affidavits in *Rex v. Great Marlow* (a), was to show that the magistrates, who made the appointment, acted without jurisdiction. — Rule discharged.

accounts upon affidavits.

(a) *Ante*, pl. 74.

332. *Rex v. Glyde, H. T. 54 G. 3. 2 M. & S. 323.* — Upon a rule to show cause, why an order of Sessions, confirming the accounts of *J. H.* and others, late churchwardens and overseers of *S.*, should not be quashed, the order in question appeared to be as follows: upon the appeal of *J. G.* against the accounts of *J. H.* and *G. H.* late churchwardens, and *T. M.* and *C. W.* late overseers of the poor of the parish of *S.*, from *Easter 1811 to Easter 1812*, and allowed by two justices of the same county, whereby he, the said *J. G.*, objected to the sum of 50*l.* in the said accounts paid to *C. W.* in his accounts as a salary, from *Easter 1811 to Easter 1812*; and also to the allowance of 40*l.* as paid to the said *C. W.* for four quarters allowance for keeping the poor, over and above the sum agreed on for that purpose; and upon hearing counsel on the part of the appellant, and also the respondents, it is ordered by this Court that the said accounts be confirmed, and by this Court they are confirmed accordingly. In support of the order of Sessions, it was admitted, that if it appeared on the face of the order, that the Sessions had confirmed the accounts in respect of a salary paid to the overseer, the order could not be supported; but they contended that so much of the order as mentioned the payments in respect of such salary, was merely a recital to the objections alleged against the accounts on the appeal, and not a part of the finding of the Sessions, upon which the judgment was pronounced; and this Court would not intend that any evidence was given to the Sessions to show that the objections were founded in fact, or if there was, that it did not fully explain the terms objected to. — *THE COURT*, however, intimated an opinion, that they must understand the confirmation to extend to the items objected to, otherwise the order should have negatived there being any such items; instead of which it recited them as part of the accounts, and then confirmed the said accounts, i. e. the accounts containing the items objected to: but they said, that if it could be shown that such items were sustainable upon any ground whatever, they would presume that the Sessions confirmed

Overseers cannot charge in their accounts for money paid as a salary to one of the overseers; and where the order of Sessions confirming the accounts was in this form:

“Upon the appeal of *G.* against the accounts of *H.* and *W.*, overseers, he the said *G.* objected to the sum of 12*l.* 10*s.* in the said accounts paid to *W.*, as a salary, it is ordered that the said accounts be confirmed:” this was considered as an order confirming the accounts in respect of the charge for the salary, and therefore the Court quashed the order; but sent the case back to be reheard as to the

nature of the payments.

the accounts on that ground. No ground, however, was suggested or cited to that effect; but it was stated, that these sums were in reality paid to the overseer in respect to the maintenance of the poor, and not as a salary. — LORD ELLENBOROUGH C. J. This rule may be enlarged, subject to a case to be stated as to what the grounds for the allowance were, that we may ascertain that the salary was not meant as a pension for the overseer, which the law will not allow. We have no doubt, on the face of the order, that he has no title to a salary for any meritorious service, or for any services at all; but we would wish to relieve the parties, if it has been paid in reality for the maintenance and keeping of the poor. Perhaps the best way will be to quash the order, and remit the case to the Sessions to rehear the appeal. — The other judges concurred. — Order of Sessions quashed.

An appeal against overseers' accounts must be to the next General Quarter Sessions after the allowance of the accounts. The 17 G. 2. c. 38. § 4. is in this respect a repeal of the 43 Eliz. c. 2. § 6.
(a) *Ante*, pl. 290.
(b) *Ante*, p. 309.
n.

333. *Rex v. Worcester*, M. T. 57 G. 3. 5 M. & S. 457. — The overseers' accounts for the parish of *Elmley Lovett* for the years 1814 and 1815, were allowed by two justices on the 31st March 1815. Notice of appeal against the same was given for the Sessions to be holden on the 23d April 1816, at which Session an appeal was entered, but the Court refused to enter upon the merits, or to hear the appeal, on the ground that it came too late. And the question was, Whether the appeal ought to have been to the General Quarter Sessions next after the allowance of the accounts? A rule *nisi* having been obtained for a *mandamus* to the justices to receive the appeal. — LORD ELLENBOROUGH C. J. In *Rex v. Coode* (a), the case of *Rex v. Lord Ashburnham* (b) was brought under the consideration of the Court, and yet they came to a decision directly contrary to it, and where good sense and convenience are all on one side, one is almost led to regret that Serjeant *Kerby's* note of that case ever got into print. The plain meaning of the 17 G. 2. in enacting, "That it shall be lawful to appeal to the next Sessions," where by a pre-existing act the appeal was without limitation of time, is to negative the power of appealing to any but the next. In *Rex v. Coode*, Lord Mansfield was of opinion, that the 17 G. 2. did confine the appeal, and the Court agreed that they must decide that the statute had repealed the 43 Eliz. in this particular. I feel no inclination to disturb that decision, considering how much the public convenience is in its favour. I know not to what difficulties persons whose property is liable, and those who are bound to account, might be reduced, if we were to adopt a different construction. With respect to the objection that the time may be too short to prepare for the appeal if upon any occasion this should be made appear, the appeal may be lodged and adjourned on a proper application. — BAYLEY J. I am of the same opinion. I think that the affirmative words of the 17 G. 2. must be taken to imply a negative. If the statute had been silent as to the time of appeal, the 43 Eliz. would have attached, and it would have been open to the party to appeal at any time. But as the statute empowers the party to appeal to the next Sessions, I think it virtually implies that he must appeal to those Sessions and to no other. — ABBOTT J. I agree that this rule must be discharged. The construction put on these statutes by my Lord and my brother Bayley, appears to be the true construction, conformably to the rule for the construction of acts of parlia-

ment so well laid down in the old cases and adopted in *Rex v. Eoode*.—Rule discharged.

334. *Rex v. Justices of Colchester*, *H. T.* 2 & 3 *G. 4.* 5 *B. & A.* 535. — *Jessop* had obtained a rule *nisi* for a *mandamus* to the justices of *C.* to enter continuances and hear an appeal against the overseers' accounts of the parish of *St. B.* in the borough of *C.* The accounts in question had, on the 14th *May* last, been duly allowed by two justices, pursuant to 17 *G. 2. c. 38.*, at a petty Sessions; but they had not been examined and allowed at a special Sessions pursuant to 50 *G. 3. c. 49.* The Sessions dismissed the appeal, on the ground that they had no jurisdiction. — *PER CURIAM.* We are quite satisfied that the Sessions had jurisdiction, and that they ought to have heard the appeal. — This rule must be absolute. — Rule absolute.

It is not necessary in order to give the justices at sessions jurisdiction to hear an appeal against overseers' accounts, that such accounts should previously have been examined and allowed, pursuant to 50 *G. 3. c. 49.* The 18 *G. 3. c. 19. § 5.* gives an appeal only in case the majority of the overseers concur in it.

335. *Rex v. Justices of Lancashire*, *E. T.* 3 *G. 4.* 5 *B. & A.* 755. — *J. Williams* had obtained a rule *nisi* for a *mandamus* to the defendants to enter continuances, and hear the appeal of *S. S.*, one of the overseers of the township of *A.*, against the allowance of the sum of 24*l.* in the constable's accounts for that township. It appeared from the affidavits, that the constable, pursuant to the 18 *G. 3. c. 19. § 4.*, had laid his accounts before a vestry meeting, on the 26th *October* last, when the item in question, being the amount of the expenses of a prosecution for a misdemeanor against *Mr. S. W.* a dissenting minister, for preaching in the streets, was disallowed by the vestry. He then, pursuant to the act, laid the accounts, on the 1st *November* last, before two justices of the peace for the county, by whom the disputed item was allowed. Against this allowance one of the overseers of the township appealed. At the Sessions, the remaining overseers, being seven in number, appeared and being sworn, stated, in open Court, their dissent from the appeal; and on this ground the Sessions dismissed it, being of opinion, that unless the majority, at least, of the overseers concurred in it, the fifth section of the act gave no appeal. — *ABBOTT C. J.* It is much to be lamented, that in the different sections of this act of parliament, we should find a variety in the expressions used. But looking at the whole, it seems to me that the words "the overseer or overseers," used in the fifth section, are to be construed in the same manner as the words "the overseers," used in the fourth; and that by both the collective body of the parish officers must be meant. I think, therefore, that the legislature did not intend thereby to give an appeal to any one of that body. It is urged, that by this construction the parish may sustain great injury; and, undoubtedly, it may happen that there may be no appeal, and that too contrary to the wishes of the majority of the persons rated. But this act of parliament seems to me to have intended to leave the appeal entirely to the discretion of the parish officers. In case the appeal be unsuccessful, costs are given; and, therefore, if we were to allow one of the overseers to appeal, and the Sessions awarded costs against him, he might possibly charge them to the parish rate. In *Rex v. Pascoe* (*a*) this consequence could not have followed. I am, therefore, of opinion, that there can be no appeal, unless the majority of the parish officers concur in it, and that the Sessions have done right in this case. — *BAXLEY J.* I am of the same opinion. The mischief suggested in argument could not be

(*a*) *Post*, pl. 349.

altogether remedied, unless an appeal had been given to the persons rated, which clearly is not the case. The clause gives a power of appeal to the overseer or overseers, if they find that the parish is aggrieved. Now, that implies that they are to exercise a judgment, which must be done by the majority.—HOLROYD J. I think that in this case the right of appeal is given to the body of the parish officers, and that the majority of them are alone competent to exercise it, on the principle that, in the exercise of a public or general power, the majority are to act for the whole. Here the appeal is only given where a grievance is found by them to exist. Now, if the majority, upon consideration, determine that there is no such grievance, it seems to me that the one in the minority ought not to be allowed to appeal, on the suggestion that he alone finds that a grievance exists. I think, therefore, that this rule should be discharged.—BEST J. concurred.—Rule discharged.

336. *Rex v. Sheard*, E. T. 5 G. 4. 2 B. & C. 856. Upon an appeal by J. S. against the accounts of the overseers of the poor of the township of S., from April 1822 to April 1823. The counsel for the respondents objected to the sufficiency of the notice given by the appellants; the Sessions, however, overruled the objection, and proceeded to hear the merits of the appeal, and struck out certain items in the accounts, subject to the opinion of this Court on the following case: The appellant was a rated inhabitant of the township of S., and having, at the October sessions, 1823, entered an appeal against the accounts of the respondents on the 2d of January 1824, served the following notice upon the respondents. This notice stated that the appellant, at the last adjourned Quarter Sessions, had entered his appeal against the accounts of J. S. and T. T., overseers of the poor of the township of S., from the month of April 1822 to the month of April 1823, and that the appellant would object to 35 items or charges of payments in the accounts specified in the notice. It then set out the names of the persons on whose account the payments were made, the sums paid, and, in some instances, the purposes for which they were made. It then proceeded to state that the appellant would insist upon the appeal that all these items ought to be struck out of the accounts and disallowed. The counsel for the respondents objected to the hearing of the appeal, on the ground that the particular causes and grounds of appeal against the items contained in the said notice were not specified and stated in the said notice, as directed and required by the statute 41 G. 3. c. 23. § 4. On the 14th of January 1824, the day before the appeal came on to be heard, the attorney for the respondents and the attorney for the appellant entered into the following admissions: "We do agree to admit that all the payments charged in the accounts of the respondents to which the appellant objects, were actually made to or for the use of the several persons to whom the same are charged to have been paid, and that the several sums charged in such accounts to have been paid to three several persons (named in the notice of appeal) respectively, were for debts contracted by the overseers of the poor of the township of S., in one or more years previous to the year in which the respondents were overseers, and were not contracted by the respondents for the service of their current year, and the respondents undertake to produce upon the hearing of the appeal

A notice of appeal against overseers' accounts, stated that the appellant objected to certain specified payments alleged in the accounts, to have been made to persons specified by name in the notice: Held, that the notice was bad, because it did not state the cause and ground of appeal as required by 41 G. 3. c. 23. § 4. The attorney some days before the appeal was tried, agreed to admit on the trial of the appeal, that the sums objected to were paid to the persons to whom it was alleged in the accounts that they were paid: Held, that this was not any waiver of the irregularity in the notice, because the consent of the attorney was not signified in open court.

"the original accounts, and vouchers regarding the items and sums of money objected to by the appellant." The Court of Quarter Sessions, without expressing any opinion as to the validity of the notice, considered the admissions as a complete waiver of the objection to it, and entered into the merits of the said appeal. It was contended, first, that although the 41 G. 3. c. 23. § 4. required in terms that the notice should specify the particular causes or ground of appeal, it was sufficient to specify the particular items and the parties to whom they were alleged to be paid. The overseer was not bound to explain the ground of particular charges. The party objecting to those charges, therefore, could not be bound to do more than to state generally that he objects to those items. Secondly, that the parties, by entering into admissions, had waived any irregularity, if there were any such in the notice. On the other side, it was contended that the notice was insufficient in not stating the particular cause of appeal. That might have been either that the sums charged were not paid, or that they were illegally paid. They cited *Rez v. The Justices of Oxfordshire* (a). Secondly, that there was no sufficient waiver in this case, because the statute expressly directed that the Sessions should not examine into any other causes of appeal than those specified in the notice, unless it were done by the consent of the attorneys signified by them in open court. Here there was no consent in open court. *Cur. adv. vult.* — BAYLEY J. now delivered the judgment of the Court. The statute 41 G. 3. c. 23. requires one of two things, either notice in writing, stating and specifying the particular causes or grounds of appeal; or, secondly, consent by the overseers, to be signified by them or their attorney in open court, that the Sessions may proceed, though there has been no proper notice. The notice in writing is to be signed by the party giving it, or his attorney, and to be left at the place of abode of the officers, and the Sessions are not to examine into any other cause or ground of appeal than those which the notice specifies. Two questions therefore arise: Has there been such a notice as the statute requires? Has there been such a waiver? In this case the original notice, which was served 11 days before the commencement of the Sessions, merely stated that the appellant would object to 35 items or charges of payment, which he specified. On what grounds he would object he did not state. The day after the Sessions commenced, being the day before their adjournment-day, the attorneys for the appellant and respondents agreed to admit, that all the payments objected to were in fact made, but that three of them were for debts contracted in prior years, not for debts contracted for the service of the year to which the accounts referred, and the respondents agreed to produce the original accounts and vouchers regarding the items objected to. The Sessions expressed no opinion as to the notice, but thought these admissions a waiver of all objections to it. As to the waiver, the statute expressly provides that the Sessions shall not examine or enquire into any ground of appeal not specified in the notice, with this single exception only, of consent by the overseers, signified by them or their attorney in open court, and we think that the statute has excluded, and intended to exclude, all questions of waiver in any other way, and that as there was no such consent as the statute requires, we cannot enter into the question of any

(a) *Post*, pl. 603.

other species of waiver. Then can it be said that this notice states and specifies the particular causes and grounds of appeal? It states only, that the appellant will object to 35 items or charges of payment: but why? It may be because they are false items, that they have not been paid; it may be, because, they ought not to have been paid; it may be, because though paid, and rightly paid, they ought not to be brought in charge against the parish, but ought to be borne personally by the overseers. And where a notice is general, and leaves it uncertain upon which of several possible grounds of objection an item is questioned, can we say that it states and specifies a particular ground? We think not. Then, will the admissions supply the defect in this notice, not as a waiver, but as making it a good notice in itself. The statute prescribes no form of notice; it specifies no time within which it shall be delivered; and its only object being that the respondents may know distinctly what objections they are to prepare to meet; and so long as that knowledge is fairly communicated to them in writing, it may be thought, that the mode in which it is communicated is immaterial. But it can never be supposed that the respondent's attorney meant, by entering into these admissions, to waive any other objections, which would otherwise have been open to him; his authority would be to uphold the rights of the respondents, not to give them up; and where the statute requires notice in writing to be left at the place of abode of the persons on whom it is to be served, we think we ought not, except upon very clear grounds, to allow it to be dispensed with. — Order of Sessions quashed.

Where overseers' accounts allowed by three justices, were delivered to the successors so late that they could not appeal to the next Sessions: Held, that an appeal to the next practicable Sessions was in time, and that the justices might then respite the appeal, although the respondents objected to the delay.

Upon an appeal against an order for the allowance of overseers' accounts, a magistrate, a rated inhabitant of the parish, cannot vote either on the determi-

337. *Rex v. Thackwell*, and others, *E. T. 6 G. 4. 4 B. & C. 62.* — The late churchwardens and overseers of the poor of the parish of *M.*, went out of office on the 25th of March 1824. Their accounts were allowed by three justices on the 27th; on the 28th successors were appointed. On the 7th of April the next Quarter Sessions were held at *U.*, 13 miles from *M.* On the same day, at two o'clock, when it was too late to enter an appeal, the late churchwardens and overseers delivered their accounts, allowed as aforesaid, to their successors. At the *Midsummer* Sessions an appeal against the allowance of those accounts was entered and respited, although the respite was objected to by the respondents; and at the *Michaelmas* Sessions, the order for the allowance of the accounts was quashed. The order of Sessions having been removed by *certiorari*, and a rule obtained for quashing it. — *ABBOTT C. J.* It is quite clear that, under the circumstances of this case, the parties were not bound to appeal at the *Easter* Sessions, and at *Midsummer* it was for the justices and not for us to decide, whether it would be proper to respite the appeal to *Michaelmas*. — Order confirmed.

338. *Rex v. Gudridge*, *E. T. 7 G. 4. 5 B. & C. 459.* — A rule had been obtained for quashing a writ of *certiorari quia im-provide emanavit*. The writ issued under the following circumstances: an appeal against an order for the allowance of the accounts of the defendants, as churchwardens and overseers of the poor of the parish of *C.* was heard, and the order for the allowance was quashed. The attorney for the respondents requested to have a case for the opinion of the Court; but a majority of the justices thought it ought not to be granted. After

some of them had left the Court, a case was again applied for, when three magistrates voted for a case, and two against it. One of the three was a rated inhabitant of the parish of C., and had on that account refused to vote on the decision of the appeal. A case was afterwards drawn up without the concurrence of the appellant or his attorney, and together with the order of Sessions was removed into this Court by *certiorari*. — ABBOTT C. J. We think it the safer course to hold, that magistrates should not interfere in cases where they are interested, and that the rule for quashing the writ of *certiorari* must be made absolute.

nation of the appeal, or on a question as to granting a case for the opinion of this Court.

IV. Of the Payment of the Balance.

339. *The Case of the Borough of Banbury, M. T. 2 Jac. 2. Skin. 258.* — There are four adjacent towns within the parish of B., and there is an overseer within each town, and an overseer also within the borough; they all join in one account, and there is but one rate made for all the parish, but the overseers of each particular town collect and pay the money within such town. A person who is tenant of lands in one of these towns lives in the borough, and is assessed by the overseer of the borough for lands within the town, and paid to the overseer of the borough, and the like is done in the other towns; so that the overseer of the borough had a surplussage for the poor within the borough, and the overseers of the towns wanted money for the poor within the towns, though the poor within the towns were less than the poor within the borough. And upon this the justices ordered that there should be a distribution made; and this order being removed, was confirmed, this being held not within the statute 13 & 14 Car. 2. c. 12.

Justices may order the overseer to make a distribution.

340. *Rex v. Churchwardens of Topsham, H. T. 10 W. 3. 2 Salk. 484.* — Three justices took the account of the churchwarden, &c. of T. for the year 1697, and adjudged that 69*l.* was thereupon due from them to the said parish, for the repayment whereof to the succeeding overseers for the year 1698, the justices made an order; to which it was objected, that the justices have no power to make such order, but only to issue warrants to distrain. But THE COURT held the order to be well made.

The justices who take the accounts of the overseers may make an order for them to pay the balance to the succeeding overseers.

341. *Rex v. Turner, E. T. 9 Ann. Vin. Abr. title Poor, 418.* — If accounts are adjusted, and the overseers refuse to pay the balance, they cannot be committed immediately, but a warrant must issue to distrain upon them, and upon the return thereof there may be a commitment; and so it was determined in *Walton's case*, before Lord Chief Justice King, at Devon assizes, 1719. (a)

The overseers cannot be committed in the first instance, for non-payment of balance.

(a) *Ante*, pl. 314.

342. *Rex v. Limehouse, E. T. 1 G. 1. Foley, 22.* — There was a custom in the parish of L., for the churchwardens to pay the casual poor, as they called them, and the overseers of the poor the pensioners. The churchwardens were 60*l.* out of pocket at the end of the year, and the Sessions finding that the overseers had enough of the public money already raised to pay the churchwardens, ordered them to be reimbursed. Objection was made to this order, that at the end of the year the officer cannot be reimbursed, for that no rate can be made to reimburse him. — PER CURIAM: Here the money was raised already, and the order was no more than that one officer should pay to another.

One overseer may be ordered to reimburse another out of money already raised.

The Sessions cannot order the succeeding overseers to pay to their predecessors sums of money due to them on account of the parish for law charges paid by them.

See 41 G. 3.
c. 23. § 9.

343. *Rex v. Overseers of St. Peter the Great, Chichester, T. T. 10 G. 1. Foley, 33.* — An order that the present overseers should pay the preceding 3*l.*, being money expended by them in law charges, was quashed. Upon searching the records, the only special order discovered of the same name and date as the above, so imperfectly stated by *Foley*, runs thus: "CHICHESTER, to wit. At the General Quarter Sessions for this city, it being made appear unto this Court by *J. C.*, that there were remaining due to him on his account, as one of the overseers of the poor of the parish of *St. P.*, within the said city, for the last year, 3*l.* 15*s.*, which the now overseers of the poor of the same parish have not paid him; it is, in the presence of the now overseers of the poor of the said parish, having nothing to say to the contrary, by this Court ordered, that the now overseers of the poor of the said parish do forthwith pay unto the said *J. C.* the said 3*l.* 15*s.* so remaining due to him on his account as aforesaid; and that they have allowance thereof in their accounts to be made with the said parish. It being made appear unto this Court by *R. L.*, that there were remaining due to him on his said account as one of the overseers of the poor of the parish of *St. P.*, within the said city, for the last year 11*l.* 2*s.* 6*d.*, and that he hath also paid *J. H.*, attorney at law, 1*l.* 5*s.* 10*d.*, for business by him done for the said parish, which the now overseer of the poor of the same parish have not paid him; it is, in the presence of the now overseers of the poor of the said parish, having nothing to say to the contrary, by this Court ordered, that the now overseers of the poor of the said parish do forthwith pay to the said *R. L.*, as well the said 11*l.* 2*s.* 6*d.* so remaining due to him on his said account as aforesaid, as the said 1*l.* 5*s.* 10*d.* by him paid to *J. H.* for business done for the said parish; and that they have allowance thereof in their accounts to be made with the said parish." — The order of the Court of King's Bench is in these words: "IT IS ORDERED, that the orders in this cause made against the present overseers of the poor of, &c. to pay a sum of money mentioned in the orders to *J. C.* and *R. H.* late overseers of the poor of the said parish, be quashed for insufficiency."

The balance must be paid over to the succeeding overseers, notwithstanding the vestry may be willing to let them retain it to pay an attorney's bill of expences for suing for a sum of money to be laid out in charitable uses.

S. C. 2 Sess. Cases, 283.

The Court will not quash an in-

344. *Rex v. Justices of Somersetshire, M. T. 8 G. 2. 2 Str. 99.* — *Mandamus* to the justices to grant a warrant for levying thirty pounds, being the balance of the account of the last overseers in their hands. — They returned that there was such a balance, but that the vestry had ordered them to retain it, and employ an attorney to sue for some charity-money, and get it laid out for the benefit of the poor; that one *Y.* was so employed, and the balance exhausted in fees, and that the overseers had engaged to pay *Y.*; *et ed de causis* they had refused to grant the warrant. — *PER CURIAM*: There must go a peremptory *mandamus*; for the 43 *Eliz.* c. 2. § 2. says, the balance shall be paid over to the new overseers under a penalty, and it is not in the power of the vestry to dispense with the statute.

345. *Rex v. King, E. T. 20 G. 2. Str. 1268.* — THE COURT refused to quash an indictment against overseers for not paying over

money to their successors, as quashing is not *ex debito justitiæ*; and this is a growing evil; and in *Rex v. Hemmings (a)*, an overseer being indicted before the Sessions, HOLT C. J., said, that it seemed to be within the direction of the statute.

dictment against overseers for not paying over the balance.

346. *Rex v. Welch*, H. T. 25 G. 3. EDITOR'S MSS. — Two justices allowed the accounts of J. C., R. W., and S. W., late overseers of the parish of C. THE SESSIONS, on appeal, confirmed the allowance, and stated the following case: At a vestry held the 2d of May 1789, in the parish-church of C., pursuant to notice published in the church for that purpose, it was agreed by the persons present, being upwards of 30, and occupiers of houses and lands in the parish, that a person should be appointed to assist the churchwardens and overseers in the execution of their office (such parish being very extensive, and much burthened with poor); and accordingly one G. H. was, by the majority of persons then present, being 26, and among whom was J. G., one of the appellants, appointed such assistant; which 26 persons signified their assent thereto, by signing their names at the foot of an agreement entered in the churchwardens' books. The said G. H. by such agreement was to be paid by the overseers, out of the money to be collected for the poor rates, 20*l.* as a salary for executing the said office of assistant. W. W., one of the appellants, not approving of the man, though he approved of the measure, was present at such meeting, but did not sign the said agreement. The other appellants, R. B. and J. W., were not present at the meeting, nor ever assented to the appointment. There are many other inhabitants and occupiers of houses and lands in the parish who were not present, and whose assent was not had to the appointment of such assistant. It is not customary in the parish to have such an assistant. The overseers had in their accounts taken credit for 20*l.* as paid by them to the said G. H. for a year's salary. — CLIFFORD, in support of the order: The churchwardens and overseers have a right to charge every thing necessary for the relief of the poor: they could not of themselves have judged of the necessity of this office and salary; but the inhabitants had judged it necessary. At a vestry all the inhabitants attend or may attend; and the act of the vestry is binding on the parish. In *Rex v. Micklefield (b)*, lately determined, money expended in a law-suit by the consent of the vestry was thought by the Court to be properly raised by a rate; and the only doubt was, whether there had been a vestry. It may be said, that, if the parish be too large, separate overseers may be appointed; but the policy of the statute 13 & 14 Car. 2. c. 12. is now disapproved of, and the Court does not encourage the division of parishes. At any rate, that cannot be done in an appeal against overseers' accounts. — Mr. BEARCROFT, *contrà*: This is a question of considerable importance, for it goes to the repeal of the 43 Eliz. c. 2. That statute has provided for the appointment of overseers, and the vestry have nothing to do with them or their accounts. The purpose of the statute in requiring that they shall be *substantial householders* was not merely to secure the money raised, but also to throw the burthen of the office on those who are able to bear it. Nobody else is liable; and an

Overseers cannot take credit for money paid as a salary to assistant overseer; although such assistant overseer be appointed with such salary at a vestry meeting. S. C. Cald. 50.

(b) *Ante*, pl. 322.

(a) Comb. 374. *post*, ch. 4.

(a) Vide *ante*,
pl. 3.

order of appointment of overseers, not stating them to be "*substantial householders*," is bad. (a) The poorer part of the parish are exempted from this burthen by the statute; but if this order be supported, it will be thrown upon them indirectly, for the salary is to be paid out of *the poor rates*, that is, by taxation of every inhabitant: and it would not be without inconvenience, for the vestry would have a place in their gift, and there would always be a contested election. This is not like the case of *Micklefield*, where the law-suit was agreed to by the vestry; there the act of the vestry would be good evidence that the officers had laid out the parish money in a law-suit properly, which they may do, but in no case can they give a salary to an assistant overseer properly. There are but three overseers; if they are not sufficient, four may be appointed, so there is no occasion to divide the parish. — LORD MANSFIELD. It is a hard case upon these officers who have paid the money by the direction of the parish, and no fraud or contrivance imputed; but I cannot make it a legal act. It is a great burthen; but the statute meant to throw it on the overseers, and that they should do it without fee or reward. — Mr. BEARCROFT said it was hard, and, on the recommendation of the Court, he would undertake that the 20*l.* should be allowed, and each party pay their own costs, on the order being quashed. — Order quashed.

The parishioners have no right to call upon the overseers for the payment of the balance of their accounts until a fortnight after *Easter*.

(b) See *Rex v. Tucker*, *post*, pl. 350.

But see the case *ex parte*, *Exleigh*, 6 *Vezey*, jun. 811. where this case is disproved of by the *Ld. Chancellor*.

If the Sessions on appeal do not order the balance to be paid over to the succeeding overseers; two justices out of Sessions may be compelled by *mandamus* to enforce the payment thereof.

347. *Rex v. Egginton* (b), *T. T.* 26 G. 3. 1 *T. R.* 369. — The defendant had received in his character as overseer of the poor 4*l.* previous to his bankruptcy, which was on the 5th of *December* 1785; but his accounts were not made out till the *Easter* following; and he had afterwards been committed to gaol by two justices, for not paying over the 4*l.* as the balance of his accounts. — LORD MANSFIELD C. J. This money was deposited in the defendant's hands for the use of the parish, which they had no right to call for till a fortnight after *Easter* 1786; therefore till that time he was entitled to retain it. But this debt only arises upon the defendant's conversion of it to his own use, which is not till after the bankruptcy. Therefore the defendant is not entitled to be discharged. — BULLER J. This motion can only be sustained on the ground, that the parishioners had a cause of action against the defendant before his bankruptcy; but at that time they could not have sued him for this debt. And even if this sum had been kept by itself, the bankrupt's assignees could not have touched it. The defendant was a mere trustee for the parish; and I cannot think that his bankruptcy discharged him from his office of overseer.

348. *Rex v. Carter*, *E. T.* 31 G. 3. 4 *T. R.* 246. — On appeal against the allowance of the accounts of an overseer, the Sessions disallowed several items in the account, amounting in the whole to 42*l.* 7*s.* 1*d.*; but the order of Sessions did not proceed to direct the overseer to pay that sum over to the succeeding overseers. On his subsequent refusal to pay over this sum, an application was made to two of the defendants, as magistrates, desiring them to enforce payment under the 43 *Eliz.* c. 2. § 2 & 4. and 17 G. 2. c. 38. § 3.; but those gentlemen, conceiving they had no authority to act, declined to interfere; whereupon a rule was obtained requiring them to show cause why a *mandamus* should not issue, to compel them, or any two of them, to receive and proceed on

the complaint against the overseer for refusing to pay over the balance in his hands. — LORD KENYON C. J. It seems to me that these justices have jurisdiction in this case. The effect of the appeal was the ascertaining the *quantum* of the arrears; and then the statute attaches, and enables the magistrates out of Sessions to enforce the payment of the balance. — GROSE J. These are as much arrears now as they were before the appeal, only the *quantum* is ascertained. — PER CURIAM, rule absolute.

349. *Rex v. Pascoe*, H. T. 54 G. 3. 2 M. & S. 343. — *Mandamus* to two justices of Cornwall, to grant a warrant of distress for levying 39*l.* 1*s.* 11*d.* upon the goods of D. K. and B. R., late overseers of the poor of Ludyen. It appeared from the affidavit in support of the rule, that the accounts of the said overseers for the year ending Easter 1813, were submitted to the defendants at a Special Sessions for allowance, when the defendants disallowed several items, upon objection taken, amounting to 43*l.* 1*s.* 11*d.* and made an order on the said overseers to pay over the same to the present overseers. The late overseers appealed against the order to the next Quarter Sessions, which appeal was dismissed for want of sufficient recognizance; but notwithstanding such dismissal they refused to pay over the balance; whereupon application was made to the defendants for a warrant of distress, to levy the same on their goods. Upon this a summons issued, and the late overseers attended the defendants, together with one of the two present churchwardens, and two of the three present overseers, when it appeared that they had paid over 3*l.* 8*s.* but refused to pay the remainder, whereupon the defendants were required by one of the present overseers to issue their warrant of distress; but as the other two parish officers refused to concur with him in such application, the defendants thought they had no jurisdiction for the want of the concurrence of the major part of the present churchwardens and overseers, and thereupon refused to issue their warrant. It was stated, that the overseer who made the request, was not able to procure any other of his colleagues to concur with him. — It was contended, upon the construction of stat. 50 G. 3. c. 49. that the warrant of the justices could only issue upon the application of the major part at least of the subsequent churchwardens and overseers. The statute enacts, "that in case the late churchwardens and overseers, or any of them, shall refuse, &c., it shall and may be lawful for the subsequent churchwardens and overseers, by warrant from any two or more justices, to levy all such sums," &c. That imports that the collective body of the parish officers must act in this instance, for otherwise the statute would have added, "or any of them," as it had done in speaking of the late overseers. There is not any ground in this case to impute fraud to the overseers who refuse to concur. — But THE COURT said, that without imputing fraud in this case they should be restraining the meaning of the statute too much, if they did not put it into motion upon the application of any of the overseers; that the mischief of a more strict construction would be great, for then the dissent of any one of the churchwardens and overseers would have the effect of suspending the statute. — Rule absolute.

If the overseers, after allowance of their accounts by two justices at Special Sessions, and an order by the justices to pay over the balances to their successors, which order is confirmed on appeal, refuse to pay such balance, the two justices may issue their warrant to levy the same under 50 G. 3. c. 49. upon the application of one of the succeeding overseers, although the rest of the churchwardens and overseers refuse to concur in such application: therefore where the justices refused to issue such warrant upon such application, the Court granted a *mandamus*.

350. *Rex v. Tucker*, M. T. 57 G. 3. 5 M. & S. 508. — *Tucker*, one of the late overseers of the poor of the parish of H., was committed

An overseer of the poor is dis-

charged by his bankruptcy and certificate from a debt due in respect of a sum of money in his hands, as overseer at the time of his bankruptcy, although this happen before the expiration of his year of office, before which time he cannot be compelled to account.

by two justices to the county gaol, until he should give in and verify his accounts as such overseer, and pay and yield up the monies due to the said parish. The case was this: *Tucker* and another were appointed overseers from *Lady-day* 1815, to *Lady-day* 1816, and took on them the said office; and *Tucker* received on account of the parish between *Lady-day* 1815, and the end of *January* 1816, 952*l.* 4*s.* 6*d.*, out of which he disbursed 770*l.* 15*s.* 8*d.*, leaving a balance in his hands of 181*l.* 8*s.* 10*d.* On the 6th of *February* 1816, a commission of bankruptcy issued against him, and he was declared bankrupt and accounted under the commission for the balance, but having before the commission absconded from his house, the account books in his hands as overseer were taken away from his house by the churchwardens and overseer. At *Lady-day* 1816, new overseers having been appointed, *Tucker* was summoned to attend, and did attend a vestry meeting, and there made up his accounts by checking them with the account books in the hands of the overseers; from which it appeared, that the above balance was due from him to the parish before he became bankrupt, and he offered to verify the account on oath. Afterwards he obtained his certificate, notwithstanding which, the justices issued their warrant upon the complaint of one of the overseers, that *Tucker* had not made and given in his account, and yielded up the monies and things claimed by the parish to them, the succeeding overseers, under which warrant he was carried before the justices, and committed as above, though he represented to them what had passed, and that he had always been, and was then ready, to verify his account on oath; and that, having obtained his certificate, he was not personally liable. And upon a rule *nisi* for a *habeas corpus* to discharge *Tucker* out of custody as, to this commitment, the doubt was, if his bankruptcy and certificate discharged the debt. — *PER CURIAM*. The money in his hands at the time of the bankruptcy was *debitum in presentia*, although he might only be accountable for it *in futuro*. — Rule absolute upon the defendant's verifying his account, and undertaking not to bring any action.

CHAPTER IV.

PROCEEDINGS FOR AND AGAINST OVERSEERS.

- I. *Protection in their Office.*
- II. *Liabilities of and Punishment for Misbehaviour: and herein of Select Vestries.*

1. *Protection in their Office.*

See Stats. 43 *Eliz.* c. 2. § 10. 7 *Jac.* 1. c. 5. 21 *Jac.* 1. c. 12. 17 *G. 2.* c. 38. § 8, 9, 10. 24 *G. 2.* c. 44. § 1 to 8. 30 *G. 2.* c. 24. § 23. 43 *G. 3.* c. 141. § 1, 2. 59 *G. 3.* c. 12. § 17.

351. *OAKLEY v. Salter, T. T.* 8 *Jac.* 1. 1 *Yelv.* 176. — Trespass against OVERSEERS OF THE POOR of *Ipswich*, for taking goods by distress for nonpayment of the poor's rate; and it was proved on the trial, that the plaintiff had voluntarily delivered the goods in payment of the rate: upon which a verdict was found in favour of the defendants. Upon a writ of error being brought, it was resolved, FIRST, That if a person voluntarily deliver goods for which he is assessed to the poor, and then bring trespass for them against the overseers, that they are within the protection of the 43 *Eliz.* c. 2. § 19. for the words "distress and sale" are put in the act by way of example only; and the statute, tending to works of charity, shall be largely expounded. — SECONDLY, That an action brought under such circumstances is the vexation which the legislature intended to prevent; and therefore the defendant is entitled to *treble damages*. — THIRDLY, That the damages in this action, by reason of the vexation, shall be assessed by the jury, and trebled by the Court, and that the Court upon that may give costs *de incremento*; for no evidence respecting costs can properly be given to a jury, inasmuch as they depend upon the usage of the court in which the action is brought. — FOURTHLY (a), That the costs shall not be trebled, but only the damages. — FIFTHLY, That the treble damages are well assessed by the jury, although it be not done by the Court; because the words are, "to be assessed by the same jury," and not damages trebled by them: and judgment was affirmed.

If trespass be brought against overseers after a voluntary delivery of goods, it is vexatious, and they shall have treble the damages assessed by the jury, and costs at the discretion of the Court.

(a) *S. C. Noy*, 137.

Same judgment, *Manial v. Bell*, Tr. 44 *Eliz.* Roll. 516. B. R.

If A bring an action against B, who pleads not guilty, and justifies as overseer, and A is nonsuited, B, shall have a writ of enquiry, to assess damages.

352. *Brampton's case, M. T.* 13 *Jac.* 1. *R. R.* 272. — He brought trespass against certain persons who pleaded not guilty; and at *nisi prius* (as appeared by the certificate of the judge upon the back of THE POSTEA) the defendants justified as overseers, &c. and showed the special matter in evidence, by the statute 43 *Eliz.* c. 2. § 19.; and the Court of King's Bench was moved to grant a writ of enquiry of damages for the treble damages which he, the overseer, ought to recover against the plaintiff by this statute 43 *Eliz.* c. 2. — And upon *oyer* of this statute, that the damages shall be assessed, &c., *Dodd* said, This is to be intended that it shall be tried by writ of enquiry of damages in such cases as it ought to be by the law, viz. upon discontinuance or demurrer; for the words "as the case requires" imply as much; and by the

law, when a jury ought to have found a thing, and do not find it, this shall not be supplied by a writ of enquiry of damages; and this was so ruled in the King's Bench, *quod fuit concessum PER CURIAM*, that such defect shall not be supplied by a writ of enquiry of damages, because then the party shall be ousted of his attain. But in the case at bar, the writ of enquiry of damages was granted by the Court, inasmuch as the plaintiff was nonsuited, so that the jury could not assess the damages; and damages were found accordingly.

An overseer may have an action for defamation in his office.

Justices in Sessions cannot award an attachment against overseers.

The statutes of 7 Jac. 1. c. 5. and 21 Jac. 1. c. 12. giving double costs, do not extend to ecclesiastical matters.

An officer is not entitled to double costs under 7 Jac. 1. c. 5. on being acquitted on an action on the case for falsely presenting a man as the occupier of lands.

A writ of enquiry shall be

353. *Thomas's case*, M. T. 3 Car. 1. *Hetley*, 96. — Action on the case by a constable of a parish for saying, "Thou art a bribing knave, and hast cozened the parish of W. in rates to 30*l*."

354. *Rex v. Bartlett*, MSS. — An award of an attachment by the justices in Sessions against overseers for disobeying an order made at a former sessions was quashed, because the Sessions had no power to award an attachment for contempt in disobeying, &c.; the proper method in such cases being by indictment for a misdemeanor.

355. *Kuchwal v. Smith*, M. T. 8 Car. 1. *Cro. Car.* 285. — An action on the case was brought against the defendants as churchwardens, for that they had falsely and maliciously presented the plaintiff upon a pretended crime of incontinency. Upon not guilty, a verdict was found for the defendants. It was moved, that they might have double costs, because they were troubled and vexed for a matter which did concern their office. — But it was resolved, that this case was not within the statute, for it is merely ecclesiastical; and the makers of the statute never intended to give double costs but where men are vexed concerning temporal matters, which they shall do by virtue of their office, and not for presentments concerning matters of fame.

356. *Stone v. Lingar*, T. T. 12 Car. 1. *Cro. Car.* 467. — Action on the case. Whereas the plaintiffs were inhabitants, and possessed of such lands for years in the parish of St. M., and were there liable to the payment of all duties for the reparation of the church of the said parish, and to all rates and charges within the same; that the defendant, being constable of R., falsely presented that they were inhabitants in the parish of R., and possessed of the said lands in the parish of R., and chargeable there to the payment of such duties; by reason whereof they were compelled to pay such sums unduly, for which they brought this action. Upon not guilty pleaded, the defendant was found not guilty. And *Grimston* moved for the defendant to have double costs, because what he did was by virtue of his office, and by the statute of 7 Jac. 1. c. 5. he ought to have double costs. — *Atkins*, on the other side, moved, that this being a special action on the case for false presentment, (and not an action of trespass or false imprisonment,) wherein liberty is given to plead "not guilty," and give the special matter in evidence; and the question being, In what parish the said lands were? that it was out of that statute, but within the statute of 23 Hen. 8. c. 15., which gives single costs to the defendant. — And all the Court were of this opinion, and gave rule accordingly.

357. *Herbert v. Waters*, M. T. 7 W. 3. *Cartk.* 362. — In reply, the defendants averred the taking as overseers of the poor, is

the general form, according to the directions of 43 *Eliz. c. 2. § 19.* The plaintiff replied, *de injuria*, &c. as the statute likewise prescribes. At the trial the plaintiff was nonsuited; and thereupon the jury were discharged, without any enquiry of the treble damages which are given to the overseers by the said statute. Upon which the Court was moved for a writ of enquiry; and after it had been twice argued, the Court solemnly determined, that a writ of enquiry should go in this case; for by *Holt C. J.*, although the first jury might have enquired, yet it was only an inquest of office, and no part of the issue, nor was it a thing for which an attaint would lie against them; and therefore it is within the rule in *Cheney's case (a)*, that where the Court *ex officio* ought to enquire of a matter upon which no attaint lies, the omission of it may be supplied by a writ of enquiry.

granted after
nonsuit in re-
plevin, where
the defendants
avow as over-
seers.
S. C. 5 Mod.
118.
1 Salk. 205.
Skin. 595.
Comb. 344.
2 Dan. 449.
1 Salk. 206.
5 Mod. 77.
Cro. Eliz. 149.
(a) 10 Co. 119.

358. *Rex v. Daubney, M. T. 7 G. 2. MSS.* — The churchwardens for the parish of —, had been sworn in upon a *mandamus* from the Court, and had made rates, &c. which concerned the parish, and had otherwise acted in their offices; and now *Henley* moved for an information *quo warranto* against one of them, to show by what authority he exercised that office. But the Court denied the motion, a churchwarden not being such a public officer against whom an information would lie; for it was no usurpation upon the Crown, and they might as well apply for an information against a constable or overseer, and the parties aggrieved might have their action; for his being sworn in by virtue of the *mandamus* would be no bar to such action, because a *mandamus* gives no right, but leaves the matter as it was before.

An information
quo warranto
does not lie
against over-
seers.

359. *Rex v. Byce, T. T. 28 G. 2. MSS.* — Defendant was indicted for not paying 20s. costs, on the dismissal of his appeal to Quarter Sessions at *St. A.'s*, from a poor's rate for *R.* Indictment set forth, that whereas *B.* appealed from, &c., on hearing, the Sessions ordered the same rate to be confirmed; and by reason the appeal appeared frivolous, the Court ordered the defendant to pay 20s. costs; and then sets forth the order *verbatim*; and then states, that the defendant having notice thereof, injuriously and contemptuously refused to pay, &c. — THE COURT refused to quash; but on demurrer the objections were, 1st, That it was not an indictable offence. 2dly, That it was stated by way of recital. 3dly, Because 17 *G. 2. c. 38.* gives a remedy by distress. 4thly, That it was not stated that the defendant was an inhabitant. 5thly, That the act concerning costs does not extend to inferior jurisdictions, as *St. A.'s*. But they were overruled; and THE COURT held, that the 8 & 9 *W. 3. c. 30.* has in certain cases given the remedy, but that this case does not fall within that remedy; for 8 & 9 *W. & M. c. 30.* gives relief in cases of appeals concerning removals.

A. was indicted
for not paying
20s. costs on the
dismissal of his
appeal to the
poor's rate;
and it was held
that an indict-
ment might be
brought.

360. *Bennet v. Hart, E. T. 28 G. 2.* — In an action of trespass against an overseer of the poor, on account of something done by virtue of the 43 *Eliz. c. 2.*, a verdict being found for the defendant, the jury omitted to assess the treble damages given by that statute. — Mr. JUSTICE DENISON. If judgment had been entered p, the application for a writ of inquiry would have been too late; but as it has not, the Court may award one. There must however be, as a foundation for awarding the writ, a suggestion entered upon the *postea*, that the defendant was an overseer of

In trespass
against an over-
seer, the treble
damages on
verdict for de-
fendant may be
assessed by writ
of equity before
judgment.
S. C. Sayer's

Law of Costs,
117.

S. C. Sayer's

Rep. 214. S. C. Sayer's Law of Damages, 245.

Overseers of
the poor, and *all*
officers acting
under a justice's
warrant, are
within the pro-
tection of the
24 G. 2. c. 44.

S. C. Clayt. 45.

Bull. N. P. 24.

See S. P. Harper

v. Carr, *post*,

pl. 363.

To entitle an
overseer, &c. to
double costs un-
der 7 Jac. 1. c. 5.
it must be certi-
fied by the judge
who tried the
cause that he was
acting in the
execution of his
office.

(b) 1 Str. 49.

(c) 2 Str. 974.

(d) Anon.
2 Vent. 45.

the poor; and that the action was brought against him for a thing done by virtue of the 49 Eliz. c. 2.

361. *Nutting v. Jackson*, E. T. 13 G. 3. *Loft*. 249. — Trespass against overseers for taking a gelding. The overseers alleged, that by virtue of their office, and in pursuance of a justice's order, they levied satisfaction for a poor's rate. It was objected on the trial, that by the statute 24 G. 2. c. 44. demand should have been made of the perusal and copy of the justice's warrant, and six days' neglect or refusal; and the learned judge who tried the cause being of the same opinion, the plaintiff was nonsuited. — LORD MANSFIELD. Overseers of the poor and churchwardens are clearly within the meaning and protection of this statute: the legislature, by passing this act, intended to extend the benefit of the statute of 21 Jac. 1. c. 12.; and, therefore, all officers acting under a justice's warrant are included in it.

362. *Grindley v. Holloway*, H. T. 20 G. 3. *Dougl*. 307. — Trespass; on not guilty, a verdict was found for the defendant. A rule was obtained to show cause why it should not be entered on the roll, that the defendant was a *constable*, and that the action was brought for what he had done in the execution of his office, to entitle him to double costs under 7 Jac. 1. c. 5. (a) There was no indorsement on the *postea*, nor certificate, in this case; but, in an affidavit of the defendant, it was sworn, that the act for which he was sued was done in the execution of his office. — Wood, in support of the rule, cited *Rex v. Poland* (b), and *Devenish v. Mertins* (c), a case on this very statute; where it is said, that, when there is a verdict for the defendant, the facts entitling him to double costs are to be put upon the record by way of suggestion. He also mentioned some modern cases which had been furnished him by the master, particularly one of *Hickman v. Goring*, a note of which was read by Buller J. — HOWARTH, for the plaintiff, insisted, that it was clear, from the words of the statute, that the judge who tries the cause must certify, that the act complained of was done by the defendant in the execution of his office. The statute did not say, "such defendant shall be allowed his double costs," but "the justice or justices, &c. shall allow him, &c." Whether the defendant was or was not acting in the execution of his office, was an inference of law to be drawn from the particular facts proved, which the judge at *nisi prius* was able to do; but the Court could not, without trying the cause again. The defendant's affidavit was absurd; it was swearing to matter of law. The cases cited did not apply. In that of *Devenish v. Mertins*, the plaintiff having moved to discontinue, the Court made the payment of the double costs part of the terms on which the motion was granted; and what was there said about a suggestion was foreign to the case before the Court. But the point was expressly decided in a case in *Ventris* (d), where a suggestion, like that now prayed for, after a verdict for the defendant, was refused, on the ground that it was the province of the judge before whom the cause was tried to allow the double costs. He stated an affidavit (which was read), by which, he said, it

(a) Made perpetual, 21 Jac. 1. c. 12.

would appear, that the defendant was not acting in the execution of his office. — The rule discharged. (a)

363. *Harper v. Carr* (b), E. T. 37 G. 3. 7 T. R. 270. — Trespass. The defendant, who was a churchwarden, took an anchor as a distress for non-payment of a poor rate under a warrant of magistrates. It was contended, on behalf of the defendant, that this action could not be maintained against him alone, but that the magistrates under whose authority he had acted, ought also to have been made defendants under the 24 G. 2. c. 44. The learned judge thought that a churchwarden distraining for a poor's rate was not within the protection of that statute. The jury found a verdict for the plaintiff, with leave to move to enter a nonsuit. — KENYON C. J. The only question here is, Whether or not we should put the construction on this very beneficial statute that the legislature intended it should receive? The act provides that, when a warrant is granted to the inferior descriptions of mankind who cannot judge of the propriety of it, they shall not be harassed with actions for executing it, but that the magistrate who granted it shall bear the responsibility himself. It is objected, however, that the statute does not extend to *churchwardens* and *overseers*, but is confined to the *officers of the peace*: but if that be the meaning of the statute, all mankind have been acting under a mistake ever since it passed; for it has always been extended to *surveors of the highways*, who have an extensive jurisdiction on the subject of the highways. In *Wilkes v. Lord Halifax* it was indeed decided that the act did not extend to one of the *King's messengers*, and there it was said that it was confined to those who were obliged to take upon them the execution of offices of this description without any reward. Nor can it be doubted but that it extends to overseers of the poor in some instances, e. g. in executing an order of removal. In 7 Jac. 1. c. 5. the description is "constables and certain other His Majesty's officers:" but in this statute the latter expression is dropped, and it speaks of "constables, headboroughs, or other officers," acting in obedience to any justice's warrant. I am very clearly of opinion, that the magistrates who granted the warrant should have been made parties to the suit, and that all those other steps should have been taken that the statute 24 G. 2. requires. — ASHHURST J. The case of *Nutting v. Jackson* is a decision directly in point. — GROSE J. I remember the case of *Nutting v. Jackson* (c), which underwent a great deal of discussion, and the determination of which was satisfactory to every person who heard it. And that was not the first determination on the point; for Mr. Lucas cited a case in

Overseers cannot be sued in trespass for levying a poor-rate by distress, without joining the magistrates who granted the warrant in the action.

See *Nutting v. Jackson*, ante, pl.

(a) See *Fletcher v. Wilkins*, post, pl. 365.

(c) *Ante*, pl. 361.

(a) But where there is a special verdict, and it appears, by the facts there found, that the act for which the action was brought was done by the defendant by virtue or reason of his office, as a justice of peace, &c. the master must tax double costs, though there has been no certificate nor allowance by the judge who tried the cause. This was determined in the case of *Rann v. Pickins*, 23 G. 3. — Lord Mansfield, and Buller J. said upon that occasion, that in common cases, where it does not appear

upon the record in what capacity the defendant was acting, an allowance by the judge is necessary, but not when it does appear on the record that he was acting by virtue of his office; that the case of a discontinuance provided for by the statute shows, that the right to double costs was not meant to be confined entirely to such allowance of a judge at *nisi prius*. The master, being asked, said, he had no doubt but that he ought to tax double costs.

(a) *Ante*, pl. 266.

1770 before The Lord Chief Justice *Wilmut* who decided at *am prius* that an overseer of the poor was an officer within the meaning of the statute 24 G. 2. It is true that the Court of Common Pleas expressed a different opinion in *Milward v. Coffin* (a): but it is sufficient to say of that case, that it was determined on the form of the action, and that the attention of the Court was not necessarily called to this point as it was in the case of *Nutting v. Jackson*. I think it would be mischievous to over-rule the case of *Nutting v. Jackson*, which was a convenient and proper decision. Therefore, without repeating the reasons already given by the Court, I am of opinion on the authority of that case, which cannot be distinguished from the present, that the rule should be made absolute. — LAWRENCE J. The ground on which I doubted the authority of *Nutting v. Jackson*, when this motion was first made, was, that the magistrates in granting a warrant of distress act merely ministerially: if they had no discretion on the subject it would be hard that they should be bound to grant a warrant of distress which they thought illegal, and afterwards discuss the propriety of the rate at their own expence. And if they had no discretion in granting the warrant, I should have doubted of that case. But the cases now referred to show that the justices do not act ministerially. Besides, the statute 43 Eliz. c. 2. requires a warrant signed by two justices to enable them to levy the money due, which would have been unnecessary if the justices were not to exercise a discretion whether they should grant or refuse the warrant. That circumstance, I think, shows that the legislature did not intend that a warrant should be granted as a matter of course, but that the justices should first inquire into the merits of the case. The cases cited show that the party ought to be summoned before the magistrates before they grant a warrant of distress; and then they must exercise their own judgment, in the same way that they do on the hearing of any other complaint. Then it seems to be immaterial, in this respect, whether the warrant be granted to the overseer or to any other person. Considering, therefore, that such a warrant is not granted as of course, and that this very point was decided in *Nutting v. Jackson*, I think that the rule must be made absolute. — Rule absolute.

The statutes 7 Jac. 1. c. 5. and 21 Jac. 1. c. 12. § 3. giving double costs to parish officers sued, &c. extend not to actions against them for nonfeazance, such as the nonpayment of money laid out for the support of one of their paupers by another parish into

364. *Atkins v. Banwell* (a), M. T. 43 G. 3. 3 East, 92. — This was a rule calling on the defendants to show cause why the master should not review his taxation of the costs in the cause, and why the defendants should not refund to the plaintiffs or their attorney 18*l.*, the double costs which had been paid to them. The action was *assumpsit* by the parish officers of *Toddington* against the parish officers of *Milton Bryant*, to recover money laid out by the former for maintenance and medical assistance afforded to a pauper belonging to the latter parish, in which there was a judgment of nonsuit (b); and the master had allowed the defendants double costs, conceiving them entitled to it under the statute 7 Jac. 1. c. 5. and 21 Jac. 1. c. 12. § 3., inasmuch as they had been sued in their character of parish officers. — THE COURT said, that this was the case of a mere nonfeazance, to which the words of the statute did not extend: and there was no reason for departing in

(a) See *Tomlinson v. Bentall*, *post*, pl. 396.

(b) Vide 2 East, 508. on the principal point.

such a case from the letter of the statute. — It was thereupon referred back to the master to review his taxation, and that such sum as he directed should be refunded.

which he went; and for which an action of assumpsit was brought against them.

365. *Fletcher v. Wilkins*, H. T. 44 G. 3. 6 East, 283. — To an action of replevin for taking the plaintiff's cattle, and unjustly detaining the same, the defendants avowed and made cognizance of the taking, two of them as overseers of the poor, a third as churchwarden of the hamlet of M. in the parish of S., in the county of O., and the fourth as their bailiff, under a warrant of distress of two magistrates made and issued on the 21st of July 1802, for levying 34*l.* 13*s.* 5½*d.* due from the plaintiff upon a poor-rate duly made and published for the said hamlet; and which rate the plea stated that the plaintiff had before the issuing of the warrant been duly summoned before them to show cause why he should not pay, and had shown no sufficient cause; by which warrant the said justices had commanded the churchwarden and overseers of the poor of the said hamlet forthwith to distrain the goods of the plaintiff; and that if within six days next after such distress the said sum with charges, &c. should not be paid, then they should sell the said goods so distrained, and out of the money arising therefrom detain the said 34*l.* 13*s.* 5½*d.* and charges, &c. rendering to the plaintiff the overplus, &c. The plea then proceeded to state the delivery of the warrant to the churchwarden and overseers of the poor, defendants, to be executed; that they required the plaintiff to pay the sum due under the rate; and because he refused so to do, they as such churchwarden and overseers, and the other defendant as their bailiff and by their command, acknowledged taking the plaintiff's cattle, &c. as for a distress, &c. And the plea concluded with an averment that *no demand of the perusal or copy of the said warrant was ever made or left at the usual place of abode of either of the defendants by the plaintiff, or his attorney or agent, in writing, as by the statute in such case made is directed.* To this the plaintiff pleaded a frivolous plea in bar, denying that at the time of making the said warrant of distress there was any such rate, &c. approved by the justices, &c. as in the said warrant is mentioned, &c. To which there was a demurrer, assigning for special cause that the plaintiff had not answered to that part of the said avowry and cognizance in which it is alleged, *that no demand was made of the perusal and copy of the said warrant therein mentioned, but had by his plea admitted that no such demand was made.* Joinder in demurrer. — After time taken to re-consider the conflicting authorities, LORD ELLENBOROUGH C. J. delivered the unanimous judgment of the Court. This was an action of replevin against four defendants, in which the two first defendants avow as overseers of the poor of the hamlet of M., in the parish of S., in the county of O.; the third, as churchwarden of the same hamlet; and the fourth defendant, as their bailiff, makes cognizance for taking the plaintiff's cows under the warrant of two justices of peace for levying by distress upon the goods and chattels of the plaintiff a poor's rate, after the same had been duly demanded. The defendants conclude their avowry and cognizance by averring, that no demand of the perusal or copy of the warrant was ever made upon or left at

Replevin is not an action within the statute 24 G. 2. c. 44. § 6. which protects constables, &c. (and amongst others parish officers, distraining for poor's rate) acting under a magistrate's warrant from any action, until demand made or left at their usual place of abode, &c. by the party intending to bring such action, &c.

the usual place of abode of the defendants by the plaintiff, or his attorney or agent, as required by the statute; and pray judgment and a return of the cows, &c. To which avowry there is a frivolous plea in bar, and a demurrer thereto; assigning for cause, that the plaintiff has not by his plea to the avowry and cognizance in any manner answered that part thereof in which it is alleged, "that no demand was made of the perusal and copy of the warrant therein mentioned;" but hath by his said plea admitted that no such demand was made. To this there is a joinder in demurrer. And the question arising upon these pleadings is, whether the statute 24 G. 2. c. 44. § 6. (which provides that no action shall be brought against any constable or other officer for any thing done in obedience to the warrant of a justice until demand shall have been made, in the manner prescribed by that act, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand) extend to the action of replevin. The cases upon this subject are, *Milward and Caffin* (a), in which case the Court determined that the action of replevin was, "an action *in rem* to which that statute had been never holden to extend:" and *Pearson v. Roberts*, *Willes's Reports*, 668., in which it was decided that an action of replevin could not be maintained against persons making a distress for not performing the highway duty, as a demand had not, previous to the commencement thereof, been made of the justices' warrant. — And *Willes* C. J. there distinguished between a replevin by plaint or mandatory writ to the sheriff, to have the goods again, which he stated not to be within the statute, and replevin by action to recover damages. And in addition to this there is the authority of an *obiturn dictum* of Lord *Kenyon* in *Harper v. Carr* (b), that but for the case of *Milward and Caffin* he should have thought replevin within the statute. And one cannot but feel the force of the observation made by Lord *Kenyon* on that occasion, "that convenience requires that it should be so, otherwise it is in the plaintiff's power to evade the provisions of the act, by adopting a particular mode of proceeding which depends on his own choice." The case in *Willes's Reports* seems to go on a distinction between an action of replevin where damages are to be recovered, and a proceeding only to have the goods again. But the industry of the gentleman who very ably argued this case has not succeeded in discovering such first-mentioned mode of proceeding by action of replevin to recover damages, as contradistinguished from proceedings to have the goods again. There does not appear in any of the books any proceeding in replevin which has not commenced by writ, requiring the sheriff to cause the goods of the plaintiff to be replevied to him, or by plaint in the sheriff's court, the immediate process upon which is a precept to replevy the goods of the party levying the plaint. Both those modes of proceeding are *in rem*, i. e. to have the goods again: and if so, and there should not be any action of replevin for the recovery of damages only, then the case in *Willes* will be an authority, in addition to that of *Milward and Caffin*, to show that the statute 24 G. 2. does not extend to the case now before the Court. The reason assigned by Lord *Kenyon* *ab inconvenienti* has undoubtedly great weight; but on the other hand it appears to us that the inconvenience of depriving the

(a) *Ante*, pl. 266.

(b) *Ante*, pl. 363.

subject of his remedy by replevin is full as great, if not greater. for it may happen that no damages which a jury is properly authorized to give can compensate the loss of a particular chattel which the owner may be for ever deprived of, if he cannot sue a replevin. In addition to the authorities quoted, the argument arising from the several statutes is very strong in favour of the plaintiff. The statute 43 *Eliz. c. 2.* which is the foundation of the poor's rate, considers replevin as a proceeding in which the right to levy distress any sums claimed on account of that rate may be properly controverted; for by the 19th section of that act, a form of avowry is given in case of a distress made: and the distress under that statute was in the nature of an execution; for the sums assessed for the relief of the poor are by the fourth section directed to be levied by distress and sale; and it would be going very far indeed to say that so beneficial a remedy is indirectly taken away by the general words of the statute 24 *G. 2.*, when the provisions which are enacted in that statute as to the form of plea, &c. are not adapted to the proceedings in replevin; and though it was truly said that prior to the statute 27 *G. 3. c. 20.* a demand of a copy of the warrant might have been made, and notice given with effect to the magistrate before the distress was sold, the time for such sale being then indefinite; yet it is not to be intended that the legislature would have passed that act in a way to defeat the remedy by replevin, had it been supposed that the statute 24 *G. 2.* had extended to it. In truth, the statute 27 *G. 2.* leaves the question upon the construction of the statute 24 *G. 2.*, as applied to a poor's rate, where it was before: for antecedently to the statute 27 *G. 2.*, a distress taken for the poor's rate under the statute 43 *Eliz. c. 2. § 13.* might have been sold immediately; and a replevin in such case in order to serve the party must have been sued out as soon as possible after the distress made, without waiting for a copy of the warrant, or the giving of notice to the magistrate: and from the incongruity between the steps required and provisions directed by the statute 24 *G. 2.*, and the proceedings in replevin, in addition to the reasons before given, we think it was not intended by the legislature that the provisions of the statute 24 *G. 2. c. 44.* should extend to this action of replevin. — Judgment for the plaintiff.

366. *Blanchard v. Bramble*, T. T. 54 *G. 3. 3 M. & S. 131.* — Assumpsit for goods sold and delivered. The action was commenced against the defendant and two others, one of whom was churchwarden, and the other overseer of *Kingston, Dorset*, for the price of sundry parcels of bread, the greater part of which was delivered to the parish officers by their order, but one parcel was delivered to them by the order of *Bramble*, acting on their behalf, and the bread was for the use of the poor of the parish. The plaintiff declared against *Bramble* only, and judgment as in case of a nonsuit for not proceeding to trial was given against him. A rule *nisi* was obtained that the master might tax double costs, under the stats. 7 *Jac. 1. c. 5.* and 21 *Jac. 1. c. 12.* — LORD ELLENBOROUGH C. J. observed, that in the case last cited, there was a wrongful receiving of the money in the first instance, which was an act done, and the action was brought upon the wrongful receiving, but here all was in the negative, for non-payment is not an act done but an act forborne to be done. — BAYLEY J. The

Parish officers, or persons acting on their behalf, are not entitled under statutes 7 *Jac. 1. c. 5.* and 21 *Jac. 1. c. 12.* to double costs upon judgment, as in case of a nonsuit in an action brought against them for the price of goods sold and delivered to them for the use of the poor.

The acts of a justice of the peace, who has not duly qualified, are not absolutely void; and therefore, persons seizing goods, under a warrant of distress, signed by a justice who had not taken the oaths at the General Sessions, nor delivered in the certificate required, are not trespassers.

action is not brought for buying the bread, but for not paying for it, which is a mere nonfeasance. *Per curiam*. — Rule discharged.

367. *The Company of Proprietors of the Margate Pier v. George Hannam, Esq.*, M. T. 60 G. 3. 3 B. & A. 266. — Trespass for taking goods; Plea, not guilty. There were two questions in the case: First, Whether the plaintiffs were liable to be rated to the poor? The Court decided that they were; and their judgment was grounded on the special provisions of the acts of parliament creating the company, and the peculiar nature of the property. It is, therefore, unnecessary to state that part of the case. The second question was, Whether the warrant of distress, signed by the defendants, *Hannam* and *Dyson*, was legal? and that depended upon the question, Whether the acts done by *Dyson*, as a justice for the cinque ports, were valid, he having omitted to deliver in a certificate, or to take the oath at the General Sessions in the cinque ports, as required by the act of parliament? The facts of the case, and the clauses of the acts of parliament applicable to the question, are fully stated by the Lord Chief Justice, in delivering the judgment of the Court. The case was argued by *Adolphus* for the plaintiff, and *Bolland* for the defendant. For the plaintiff it was urged, that the 51 G. 3. c. 36. required the justices for the cinque ports to qualify, and that the indemnity act applied only to those who actually did qualify. Here, the defendant *Dyson* had not qualified at the time of the trial. This was not like the case of a person who practised as an attorney without being duly admitted. His acts, indeed, were valid; but they were cured, from time to time, by the acts of the parties on the other side. For the defendant, it was urged, that the acts of the defendant, *Dyson*, were not void, although he might be liable to a penalty for having acted without being duly qualified. The 18 G. 2. c. 20. expressly imposed a penalty on such a person acting as a justice without being qualified. The 51 G. 3. c. 36. applied to the cinque ports, and was *in pari materid*. The penalty, though not expressly mentioned in that act, will attach. The words of the 51 G. 3. c. 36. were not stronger than the 13 Car. 2., which makes void the election of any corporate officer who shall not have taken the sacrament within a year. The annual indemnity act relieves such a person from all penalties, and makes his intermediate acts valid. This was like the case of a person practising as an attorney without being duly admitted: he was liable to a penalty, but his acts were not void. The inconvenience that would follow from the construction of the act contended for, on the part of the plaintiff, would be very great. Every person acting under the authority of such a magistrate would be guilty of an unlawful act, and resistance to him would be lawful. A constable might even, in such a case, become liable to a charge of murder. *Cur. adv. vult.* — ABBOTT C. J. now delivered the judgment of the Court. This was an action of trespass, brought for levying certain poor-rates for the parish of *Saint John the Baptist*, in the *Isle of Thanet*. There had been three rates, all regularly made and published. Two of the three had been duly allowed by two of the justices of the cinque ports. The third was allowed by the defendants, *Hannam* and *Dyson*, acting as such justices: the warrants of distress had been issued by these defendants, and executed by the other two defendants, one of whom was

an overseer of the poor, and the other a constable of the parish. Copies of the warrants had been demanded, and notice of the action given. A case was reserved at the trial of the cause, upon two questions; first, Whether the plaintiffs were liable to be rated for the relief of the poor? secondly, Whether the acts of the defendant, *Dyson*, as a justice of the peace for the liberties of the cinque ports, in the matter in question, were valid or not. The case was argued before us upon the first question at *Serjeant's Inn Hall*, and we then gave our opinion in the affirmative, viz. that the plaintiffs were liable to be rated for the relief of the poor. The second question was spoken to at the same time, and afterwards more fully argued here during the present term. It arises in this manner: By an act of the 51st of His late Majesty, c. 36., His Majesty is authorised to issue a commission, to be directed to certain persons to be therein named, constituting them to be justices of the peace within and throughout the liberties of the cinque ports, and investing them with the same power and authority as belongs to any mayor, bailiff, or jurat, to exercise within the liberties of the town whereof he is mayor, bailiff, or jurat, "And from and after." (these are the words of the statute,) "such commission or commissions shall have so issued, all persons and every person named in any such commission or commissions shall be, and they and each of them is and are hereby declared to be justices and a justice of the peace within and throughout the liberties of the cinque ports, and invested with the same power and authority within and throughout the same," as belongs to any mayor, bailiff, or jurat within this port or town. By the third section of this act it is provided and enacted, "That no person or persons to be named in such commission shall be thereby, or by this act, authorised to act as a justice of the peace, unless he shall have such qualification as will authorize him to act for a county, and unless he shall have taken and subscribed the oaths, and delivered in at some General Sessions to be holden in some one of the cinque ports, the certificate respectively required to be taken and subscribed and delivered in by persons qualifying themselves to act for counties." The defendant, *Dyson*, had taken the oaths under a writ of *dedimus potestatem*, but he had omitted to deliver a certificate, or take any oath at any General Sessions in any one of the cinque ports; and upon this omission he objection to the validity of his acts as a justice was grounded. We are of opinion, that, notwithstanding this omission, his acts as justice, in the matters in question, were valid. An objection of the same nature may happen to arise in some cases of persons acting as justices for counties at large; and this gives a general importance to the question. By the stat. 18 G. 2. c. 20., it is enacted, "That no person shall be capable of being a justice, or acting as such for any county, without the qualification by estate therein mentioned, and who shall not take, at some General or Quarter Sessions, the oath therein prescribed." And by the second section, "Any person who shall act as a justice without having taken the oath, or without being qualified, shall forfeit 100*l*." It is obvious that if the act of the justice, issuing a warrant, be invalid on the ground of such an objection as the present, all persons who act in the execution of the warrant will act without any authority: constable who arrests, and a gaoler who receives a felon, will

each be a trespasser; resistance to them will be lawful; every thing done by either of them will be unlawful; and a constable, or persons aiding him, may, in some possible instance, become amenable even to a charge of murder, for acting under an authority, which they reasonably considered themselves bound to obey, and of the invalidity whereof they are wholly ignorant. An exposition of these statutes, pregnant with so much inconvenience, ought not to be made, if they will admit of any other reasonable construction. "Acts of parliament," says Lord Coke, "are to be so construed, as no man that is innocent, or free from injury or wrong, be by a literal construction punished or endamaged." We think these acts do most reasonably admit of another construction. We think the *restraining* clauses are only prohibitory upon the justice. By the particular act upon which this question has arisen, Mr. Dyson, having been named in the commission, is declared to be a justice, and invested with power and authority as such. The proper effect, therefore, as it seems to us, of the third section, is only to make it unlawful in him to act as such; but not to make his acts invalid. Many persons, acting as justices of the peace in virtue of offices in corporations, have been ousted of their offices from some defect in their election or appointment; and although all acts, properly corporate and official, done by such persons are void, yet acts done by them as justices, or in a judicial character, have in no instance been thought invalid. This distinction is well known. The interest of the public at large requires that the acts done should be sustained; sufficient effect is given to the statutes by considering them as penal upon the party acting. No pecuniary penalty, indeed, is imposed by the stat. 51 G. 3.; but a justice acting contrary to its prohibitory clause will subject himself, if not to the penalty of the 18 G. 2., yet certainly to a prosecution by indictment. For these reasons we think there must be a judgment of nonsuit.

The 59 G. 3. c. 12. § 17. vests in the churchwardens and overseers of the poor in the nature of a body corporate, all buildings, lands, and hereditaments belonging to the parish: held, that in order to constitute the body corporate intended by the act, there must be two overseers and a churchwarden, or churchwardens, and that where there were two overseers appointed,

368. *Woodcock v. Gibson*, T. T. 6 G. 4. 4 B. & C. 462. — Trespass for breaking and entering a close, called the garden in the parish of T. and destroying vegetables, &c. Plea 1st, not guilty; 2d, that the close was the soil and freehold of G., and one T. then being the sole churchwarden of the parish of T.; 3d, That it was the soil and freehold of G. and the said T. as and then being the overseers of the poor, and the said T. then being the sole churchwarden of the said parish. Replication to each, that it was the close of plaintiff, and not of G. and T. in manner alleged. At the trial before Best C. J. the trespass was proved, and for the defendants it was shown that the *locus in quo* was parish property, and that G. and T. were appointed overseers of the poor on the 5th of April 1823, and on the 22d of the same month T. was appointed sole churchwarden, it being the custom of the parish to have one only, and it was then contended that the *locus in quo* vested in them by the operation of the 59 G. 3. c. 12. § 17. The Chief Justice was of that opinion, but directed the jury to assess the damages on the second and third issues, to save expense, if this Court should be of opinion that the close was not the soil and freehold of G. and T., and the jury assessed the damages at one penny. A rule *nisi* for entering a verdict for the plaintiff on those issues having been obtained in *Michaelmas* term. — BAYLEY J. The 17th section of the 59 G. 3. c. 12. certainly vests the property in

the churchwardens and overseers as a body politic, and, therefore, until officers of both descriptions are appointed, nothing vests in either of them. Now *G.* and *T.* were appointed overseers on the 5th of *April*, and if there were at that time a churchwarden, the property might vest in him and the overseers; but that does not appear, nor is there a plea to that effect. *T.* was afterwards appointed churchwarden, but neither before that appointment nor afterwards, could he and *G.* by themselves constitute a corporation of churchwardens and overseers. The property, therefore, would not vest in them so as to support the pleas of soil and freehold, and the rule for entering a verdict for the plaintiff must be made absolute. — Rule absolute.

one of whom was afterwards appointed (by custom) sole churchwarden, the act did not vest parish property in them.

II. Punishment for Misbehaviour; and herein of Select Vestries.

See stats. 43 *Eliz.* c. 2. § 2. 4. 13 & 14 *Car.* 2. c. 11. 3 *W. & M.* c. 11. § 12. 17 *G. 2.* c. 5. § 1. 17 *G. 2.* c. 38. § 14. 9 *G. 3.* c. 37. § 7. 33. 58 *G. 3.* c. 69. 59 *G. 3.* cc. 12. 85.

369. *Rex v. Barlow*, 5 *W. & M.* Salk. 609. — Indictment on 14 *Car.* 2. c. 12. against the churchwardens and overseers for not making a rate to reimburse the constables. Exception was taken, that the statute only puts it in their power to do so, by the words “*may*, &c.” but does not require it as a duty, the neglect of which should be punishable. — By THE COURT: Where a statute directs the doing a thing for the sake of justice or the public good, the word “*may*” is the same as the word “*shall*.” Thus the 23 *Hen.* 6. c. 9. says, the sheriff *may* take bail; which is construed, he *shall*, and he is compellable so to do.

Overseers are indictable for not making a rate to reimburse the constables. S. C. Carth. 293. Skin. 370.

370. *Rex v. Commings*, *H. T.* 7 *W. 3.* 5 *Mod.* 179. — The defendants were indicted at the Sessions, for that they being chosen overseers of the poor of the parish of *Lynn* for the year 1693, and having taken upon them that office, they *et uterque eorum*, did collect and receive several sums of money for the relief of the poor, and did refuse to account within four days after the end of the said year, and after other overseers were nominated, to give an account to two justices of the peace of the sums by them received, and to deliver over the same to the new overseers, but converted it to their own use, *contra formam statuti*. The indictment was removed by *certiorari* into the King's Bench; and, among other exceptions, it was objected, that an indictment will not lie for this offence, for it is grounded on an act of parliament which appoints the overseers to account, and inflicts a punishment on their refusing, viz. to be committed by two justices till they account and pay what remains in their hands, there to remain without bail; so that this being an offence made by a particular statute, which was not so at common law, and directing how the offence shall be punished, that must be the remedy, and no other can be pursued. — THE COURT. The overseers are required by the act to account, and their refusal is a contempt of the law, for which they may be indicted; and as to that there is no difference when a thing is enjoined and when it is prohibited by a statute; for when it is prohibited, the party shall not only have his action for the injury done, but the offender shall be punished at the King's suit for the contempt of the law. It is true, two justices of peace have power to commit the overseers refusing to account, which is a proper

Overseers are indictable at the Sessions for refusing to account within the time limited for the monies they have received for the relief of the poor.

S. C. 3 Salk. 187. 6 *Mod.* 96. 1 *Keb.* 983.

(a) Comb. 374. and 3 Salk. 186. under the name of Rex v. Hemmings and another.

(b) See Rex v. Young, 3 T. R. 98.

(c) Comb. 374.

Overseers are indictable for not relieving the poor, or relieving unnecessarily.

One overseer may levy penalties inflicted on another overseer.

The penalties for not meeting in the church shall not be inflicted on overseers of extraparochial places. S. C. Viner 415. Ante, pl. 47.

A conspiracy by parish officers to marry a female pauper settled in the parish of A to a pauper settled in the parish of B, in order to bring a charge on the parish of B, is an indictable offence; but the indictment must aver that the parties were legally settled in their respective parishes; for saying they were inhabit-

mean to come at the right; but it doth not satisfy the King for the contempt. *Sed adjournatur*. — It was moved again in *H. T.*, 8 *W. 3.* (a), upon a *demurrer* to the indictment; and objected, First, That it set forth that they had collected divers sums of money, but did not say how much, and therefore bad for uncertainty. Secondly, That it set forth that they *et uterque et eorum* converted the money to their own use. — *HOLT C. J.* held, that it was not necessary to set forth how much money they received, it being impossible to charge them with every particular sum; and the indictment is for refusing to come to account. And as to the second objection, it was held, that the cheat of one is the cheat of the other (b); but as to the objection that this indictment would not lie, because another remedy was provided by the statute, the Court doubted. — At another day, however, *HOLT C. J.* said (c), where a statute gives an authority to two justices of the peace, why may they not do it at the Sessions, unless it be where an appeal lies afterwards? An indictment at Sessions seems to be within the directions of the statute.

371. *Tawney's case*, *E. T. 3 Ann. B. R. MSS. Cases. Vin. Abr. tit. Poor*, p. 415. — If an overseer do not provide for the poor, he is indictable; and if he relieve the poor when there is no necessity for it, it is a misdemeanour. (d)

372. *Anonymous*, *T. T. 11 Ann. B. R. Vin. Abr. 415*. — If any churchwarden or overseer of the poor be convicted of the penalties inflicted by the 43 *Eliz. c. 2. § 2*, the other must levy it.

373. *Rex v. Rufford*, *E. T. 7 G. 1. 8 Mod. 39*. — On a *mandamus* to appoint overseers, it was returned that *Rufford* is an extraparochial place, and therefore are not to provide for their poor. The question was, Whether extraparochial places are within 43 *Eliz. c. 2?* and it was contended that they were not; but THE COURT was of opinion, that extraparochial places are within the words of the statute; but that the penalty for not meeting in the church shall never be inflicted on the overseers of the poor of such places, because the inhabitants have no church to meet in.

374. *Rex v. Edwards*, *M. T. 11 G. 1. 8 Mod. 321*. — The defendants were indicted, for that they, *per conspirationem inter eos habitam*, gave the husband money to marry a poor helpless woman, who was an inhabitant in the parish of B. and incapable of marriage, on purpose to gain a settlement for her in the parish of A. where the man was settled. It was moved to quash this indictment, because it is no crime to marry a woman and give her a portion; and the justices are not proper judges what woman is capable of a husband, neither have they any jurisdiction in conspiracies. — THE COURT. A bare conspiracy to do a lawful act to an unlawful end, is a crime, though no act be done in consequence thereof (e); but if the fault in the indictment be plain and apparent, it is quashed for that reason, and the party shall not be put to the trouble to plead or demur. Suppose there is a conspiracy to let lands of ten pounds a year value to a poor man, in order to get him a settlement, or to make a certificate man a parish officer, or a conspiracy to send a woman big of a bastard-child into another parish to be delivered there, and so to charge

(d) See *Rex v. Collett*.

(e) *Reg. v. Best*, 2 *Ld. Ray. 1167*. S. C. 6 *Mod. 185*.

that parish with the child ; certainly these are crimes *indictable*. (a) But in this indictment it is not set forth, that the woman was likely to be chargeable to the parish. As to the objection, that the Sessions have no jurisdiction in *conspiracy*, the contrary is true ; they have no jurisdiction in *perjury at common law*, but by the statute they have ; and they have no jurisdiction to indict for forgery, but certainly they have jurisdiction *de conspirationibus* (b), and such a person as this defendant is, was punished by indictment at common law. (c) But in the *Trinity Term* following judgment was given for the defendant, because it was not averred in the indictment, that the woman was last legally settled in the parish of B., but only that she was an inhabitant there.

375. *Rex v. Busby*, E. T. 5 G. 2. MSS. — The Court granted an information against the defendant, who was an overseer, for that he with others had forcibly removed a poor woman, who was very sick and near her time, from one parish to another, to avoid the expence it might occasion to the first parish if the child should be born there ; and the cases of *Rex v. Godalming*, and of *Rex v. Eton*, H. T. 4 G. 1. were cited.

376. *Rex v. Harman*, E. T. 12 G. 2. MSS. — Motion to quash an order of justices appointing overseers for the parish of *St. Clement Danes*, and likewise an order of seizure, for eleven neglects with respect to the said office. — HOLLINGS for the defendant. The order of seizure sets forth, that the defendant was guilty of 11 neglects of the office, and therefore orders 11*l.* to be levied pursuant to the act ; but it does not appear that the defendant had notice of the order of appointment before the order of seizure was made ; for the summons should have been personally served (d). By the statute, the penalty is 20*s.* for absenting from monthly meetings, or being negligent in their office ; and here are 11 neglects charged, but only five of them are for absenting from monthly meetings ; four more are for absenting from other meetings not within the statute ; the tenth is, that his maid refused to take the rate-book ; and the eleventh is, that he refused to take 7*s.* 3*d.* for half a year's parish rate. — SIR THOMAS ABNEY argued, that here were three appointments, viz. 18th April, 24th April, and 26th April 1738, by which the justices nominated Harman and four other persons for overseers of *St. Clement Danes*. On the *certiorari* they have received two summonses and

ants only is not sufficient.

1 Salk. 174.

2 Ld. Ray 1167.

Finch 82. cap.

15.

The Court will grant an information against an overseer for removing a pauper to prevent her being chargeable.

An overseer cannot be adjudged guilty of absenting himself from the monthly meetings appointed by 43 Eliz. c. 2. until he has had personal notice of his appointment.

(d) 5 Mod. 419.

(a) It is also said, that the Court will grant an information against overseers for this offence, *Rex v. Sadler*, Sayer, 260. *Rex v. Tarrant*, 4 Burr. 2106. But the Court has come to a resolution, not to grant informations in these cases, E. T. 25 G. 3. and therefore it was refused against the overseers and inhabitants of *Doncaster*, for conspiring to prevail on a soldier to marry a poor woman of their parish, then big with child, for the purpose of throwing the burthen of maintaining her on another parish, *Rex v. Compton*, Cald. 246. It has also been refused in a very gross case, that of a man under duress

married to an idiot, *Rex v. Upsdale*, Mich. 28 G. 3. Cald. 247. *notis.* But if persons concurring in such conspiracy are of good circumstances, and in responsible situations, the Court will grant an information, otherwise the injured parties must resort to the ordinary method of indictment, Cald. 247.

(b) *Rex v. Respal*, 3 Burr. 1320.

(c) It is said S. C., 1 Sess. Cases, 336, that the Court left the defendants to demur or plead to it, as they should think fit ; and S. C. 1 Stra. 707. that on a demurrer to this indictment, judgment was given for the defendant, because it is not an offence indictable.

a warrant of distress ; but the Court will not take notice of them, because they ought not to have been returned ; for the Court will never quash the *process* of justices, but only matters of judgment. — THE CHIEF JUSTICE. We cannot take notice of the summons or the warrant of distress. — HOLLINGS. In the warrant there is an *adjudication*, and the Court will take notice of that. — THE CHIEF JUSTICE. The consideration is what on one side is called a *warrant of distress* ; and on the other side an *order* : if it is a warrant of distress, the Court cannot take notice of it, as in the case of *bail* or *recognizance* : but, in my opinion, it appears on the face of it to be an *adjudication*, and as much so as an order of removal ; for they adjudge the party settled, and then there is an order for his removal. Now this is a warrant of distress, preceded by an adjudication ; for it recites the neglect, and adjudges that he is guilty of them, and then directs the distress. It cannot be determined what is an order but by the words of adjudication ; and taking it to be an adjudication, the exception seems to be very strong ; for it is, that they adjudge him to be guilty of the neglects aftermentioned. The servant's refusing the rate-book, and his refusing the rate, without appearing by whom given, and which are some of the neglects of which they adjudge him guilty, are certainly exceptions to this order ; and being connected with others in the order, I think, form a strong objection to it. — PAGE J. I think the objection well taken, and that the orders should be quashed. The warrant is an order, and the warrant is grounded upon the order which precedes it. — PROBYN J. The only consideration is, as to the fines levied by this warrant of distress. This is an *adjudication*, for they adjudge the neglect, and direct the distress ; and the judgment and execution may be in the same instrument, as in orders of removal. Here are 11 penalties for 11 distinct offences of quite different natures, and they ought to be distinctly levied for each offence ; but here they are comprehended in one judgment, and a gross sum directed for the whole. If a man be regularly appointed, he must have notice, or he cannot be charged for neglect : as to the maid's refusing the book, and his refusing the rate, it is not said it was a rate of the parish ; perhaps the person who tendered it had no authority. This is an order, and in its nature void, and ought to be quashed. — CHAPPLE J. This is as much an *adjudication* as any that ever came before the Court ; for the words are " that they adjudge," &c. I think the adjudication is bad in every respect. It is not alleged that he has accepted the office, and he is to be punished for what are called *neglects* : but it seems to me that they are all improperly called so, and here is an entire judgment upon all. I am therefore of the same opinion as to the adjudication, that it should be quashed. — Rule absolute for quashing the order of adjudication.

Indictment lies for refusing to accept the office of overseers, or for disobedience to an order of justices, or to an act of parliament.

377. *Rex v. Jones*, M. T. 14 G. 2. MSS. — Three justices of the peace for the county of Kent did, within a month after *Easter*, under their hands and seals, appoint H. and J., as being substantial householders, to be overseers of the poor of M. for the year next ensuing. Upon notice, J. obstinately refused to accept the office, and thereupon was indicted upon 43 *Eliz. c. 2*. J. demurred to the indictment, and there was a joinder in demurrer. — LEE C. J. As to the question, Whether an indictment lies upon

43 *Eliz. c. 2.* for an overseer refusing to accept the office? I am of opinion it will. The statute enacts, that "four, three, or two substantial inhabitants of the parish, to be nominated by two justices of the peace, shall be overseers of the poor." This is the manner in which this act hath constituted this officer; and then it goes on, and directs particularly what are the *agenda* of an overseer; and then there is a subsequent clause that directs farther acts to be done by overseers; as to meet monthly at the church in the afternoon after divine service, &c., and annexes the penalty of 20s. to every omission. If this clause reach only to the particular instances therein enumerated, then the refusal of such office of overseers is a case that is not provided against by this clause to undergo the penalty of 20s.; for it only extends to omission after the actual acceptance of the office. I am of opinion that *J.* may, and has refused the office; and though no express indictment is given by this act of parliament for a refusal of office, yet *J.* will be indictable upon this statute, upon the principles of common law, which are, that every man shall be indicted for disobeying a statute; besides, as this is an order of justices, he is indictable for his disobedience and breach of that; and there is no foundation for the distinction between a constable and an overseer; therefore judgment for the prosecution.

S. C. Strange,
1146.
2 *Sess. Cases*,
153. 7 *Mod.*
410. 8vo. edit.

378. *Rex v. Davis*, *M. T.* 28 *G. 2. MSS.*—The defendants were indicted for not receiving a pauper sent to them by order of two justices, and they were found guilty upon their trial. A motion was made in arrest of judgment, as not being an indictable matter. But judgment was affirmed; for a power of removing a pauper being given to two justices by the 13 & 14 *Car. 2. c. 12.* the not receiving him is a disobedience of that statute, for which an indictment will lie; for whoever refuses to obey an act of parliament is indictable, unless another remedy is provided; which there is not in this case. (*a*)

Overseers indictable for not receiving a pauper sent to them by order of justices.
S. C. Sayer, 163.

379. *Rex v. Tarant*, *M. T.* 7 *G. 3.*—The defendant was overseer of the poor, and the only wealthy man in the parish. He gave 3*l.* to a poor man of another parish to marry a poor woman of the parish of which he was overseer. A rule was granted to show cause why an information should not go against him for a misdemeanor. The defendant on showing cause admitted the facts; but said, that the man and woman had long before intended to marry, and that nothing prevented them from carrying their intention into execution, but the want of a little money to begin housekeeping, which he out of charity gave them. The case of *Rex v. Edwards* (*b*) was urged in behalf of defendant. But upon three cases being cited in point, *Rex v. Market Harborough* (*c*), *Rex v. Saul*, and *Rex v. Perrot*, THE COURT expressing some indignation at the conduct of the defendant, and declaring that they had no doubt of his guilt from his own account, unanimously made the rule absolute.

A marriage, though procured by the overseer of a parish for the purpose of changing the settlement of one of the parties married, is good.
Salk. 174.
(*b*) *Ante*, pl. 374.
(*c*) 1 *Will.* 41.

380. *Rex v. Pardy*, *T. T.* 7 *G. 3. MSS.*—This was a motion to quash an indictment which had been found against the de-

The Court will not quash an indictment

(*a*) It was contended, that the indictment would not lie, because the 3 & 4 *W. & M. c. 11.* had provided another remedy; but the Court said, that the provision of this statute only applied to cases where the removal was to a place out of the jurisdiction of the justices.

against overseer, but drive the party to his demurrer.

Cald. 432.

(a) Allen, 78.

defendants for not taking upon them the office of overseers of the poor. THE FIRST OBJECTION was, Because it was not stated by whom they were appointed overseers, but only "*debito modo apponit*;" and in support of this objection *Prigg's* case (a) was cited: where an indictment against a man, stating that *legitimè electus fuit* headborough of such a vill, *et non præstitit sacramentum suum* before any justice of peace to execute the office, *sed voluntariè et obstinatè* abstained from it, was quashed, because it did not appear how he was chosen headborough. THE SECOND OBJECTION was, Because it was a joint indictment; and in this case the offence of one can never be the offence of the other. — But THE COURT refused to quash the indictment for these exceptions, and said, the party might demur to it, if they pleased.

If on a dispute respecting a rate for the relief of the poor the matter be referred, and in the mean time the overseer borrow money on his own notes for the relief of the poor, and make no rate to reimburse the money, the lender may recover it against him in an action for money had and received to his use.

381. *How v. Keech, Bedford Lent Assizes, 1772.* — The plaintiff declared upon two notes given him by the defendant; by one of which the defendant promised to pay to the plaintiff 20*l.*, and by the other 10*l.* The plaintiff likewise, in the *third* and *fourth* count, declared for 50*l.* had and received by defendant for the use of the plaintiff, on the same days on which the notes were dated. The notes were as follow: "I PROMISE to pay *Richard How*, or order, 20*l.* out of the first levy which shall be collected "for relief of the poor, he having this day advanced that sum to "me. EBENEZER KEECH.—*Aspley, Jan. 22, 1771.*" The second note was in these words: "I PROMISE to pay *Richard How*, or "order, 10*l.* as above-mentioned, he having this day advanced "that sum to me, on the said account. EBENEZER KEECH.— "*Aspley, Feb. 25, 1771.*" These notes were both written on the same piece of paper. The defendant pleaded, that he did not undertake in the *manner and form* in which the plaintiff had declared; upon which issue was joined. At the trial it was proved that the notes were signed by the defendant, and that he had confessed that he had received the money from the plaintiff; and it was admitted on all hands, that, previous to the date of these notes, there had been disputes about the poor-rates of *Aspley*, between the plaintiff and his tenants on one side, and Mr. *Moore*, a gentleman of considerable property, and several other of the parishioners, on the other side; that the rates were quashed at the *Epiphany Sessions 1771*; and the matters in dispute referred for examination to two gentlemen, by an order of Sessions; and at the same time, to prevent the poor from being without relief, while the matters in dispute were under the examination of the referees, the plaintiff and Mr. *Moore* agreed and undertook before the justices to advance money to the defendant, then overseer of the poor, to be applied solely to their relief; and the plaintiff accordingly advanced the sum of 30*l.* The reference was fruitless, from a disagreement in opinion of the referees, who made their report to the justices at the *Easter Sessions* in 1771. The defendant continued in office about six weeks after the date of the last note, but did not make any rate or levy in that time, by which means the plaintiff was forced to bring this action to recover the money so advanced to the defendant. — Mr. *BARON ADAMS* ruled, that the plaintiff was clearly entitled to recover upon the third and fourth counts, for money had and received for the plaintiff's use. The validity of the notes was therefore not agitated.

382. *Rex v. Barratt, M. T. 21 G. 3. Dougl. 449.*— This was a rule to show cause why an information should not be filed against the defendant, as one of the overseers of the poor for the borough of S. The offence charged by the affidavits was, that, after the poor-rate had been signed by the parish-officers, and allowed by the justices, the defendant had altered it, by interlining an article of one Geary for a tenement in the borough. It appeared that Geary's landlord (since one of the members returned for the borough), had been rated for this tenement for the two preceding years, and the prosecutor swore that he believed the alteration was made to serve election purposes.— On the other side, it appeared that the defendant had the concurrence of the other parish-officers, and the permission and approbation of the justices, and he positively swore that he had not acted with any view to election purposes. It also appeared that there was no vacancy at the time; that the rates are made at S. every month; and that Geary's name had been inserted in a subsequent rate, which was made previous to the election, and had been suffered to remain without any appeal.— LORD MANSFIELD said, that in granting informations, the Court always looked to the motive; that the defendant had acted improperly, but with the sanction of the magistrates' approbation, it was very natural for him to fall into such a mistake, and he denied positively having acted with any view to election purposes, which indeed the circumstances showed could not have been answered by what he had done; the crime, if any, was in the justices, and they ought to have been the objects of the application; however, as the conduct of the defendant was irregular, the Court would not discharge the rule with costs.— Rule discharged.

The Court will not grant an information against overseers if they have committed the imputed offence inadvertently.

383. *Rex v. Compton, H. T. 23 G. 3. Cald. 246.*— Cockell moved for an information against the defendants, overseers and inhabitants of the parish of D., in the county of Y., for conspiring to prevail upon a soldier to marry a poor woman of their parish, then big with child, for the purpose of throwing the burthen of her maintenance from themselves upon the township of K., in that county, in which township her husband, the soldier, was settled. The affidavit, as stated by Cockell, very strongly impeached the conduct of the defendants.— *Sed per* LORD MANSFIELD and THE COURT. Great inconvenience has been felt from the practice of obliging persons in low circumstances to show cause against informations, and to come afterwards before this Court from perhaps a very remote part of the country, and consequently at a great expence, to receive judgment. To be sure this appears to be a very fit subject for prosecution; but justice may effectually be done otherwise; and it will be more proper in all (a) such cases, to take the

Nor will the Court grant an information against overseers for procuring the marriage of a pauper with a view to burthen another parish. See *Rex v. Watson*, 1 Wils. 41.

(a) So, in the case of *Rex v. Slaughter and Ball*, the overseer and the churchwarden of the parish of St. Mary Woolchurch Haw in the city of London, upon the motion of Sylvester, who cited he cases in Strange and other more recent manuscript authorities, for an information against the defendants for conspiring to marry a poor woman of their parish to a person in the workhouse of another parish.— *Buller J.* said, No such rule has been granted

since I sat here. The Court has come to a resolution not to grant informations in these cases. E. T. 25 G. 3. 1785, Wednesday, April 20th. This application was also made without effect in a very gross case, that of a man under a dross married to an idiot. *Rex v. Updale and Winn*, overseers of the poor of the parish of New Alceford, Hants, et al'. Upon the motion of Jekyll, M. T. 25 G. 3. 1787. Monday, November 26, per Ashhurst, Buller, and Grose, Js.

(a) See the case of *Rex v. Tanner*, 1 Esp. Rep. 304.

Court never quashes indictment for serious offences, but upon the clearest and plainest grounds. In an indictment for criminal misconduct towards the poor a general description of them without setting out their names seems sufficient.

common remedy, and proceed by way of indictment. (a) — Motion denied. — The mayor and town-clerk of *D.* were included in this application; but the Court thought the affidavit did not sufficiently reach them. If it had, LORD MANSFIELD said, the Court would have granted the rule against them.

384. *Rex v. Wetherill*, *E. T.* 24 *G. 3. Cald. Rep.* 432. — This was an indictment against two parish-officers for keeping and lodging several poor persons in a filthy unwholesome room with the windows not in a sufficient state of repair to protect them against the inclemency of the weather. It stated that *Wetherill*, late of *B.*, in the borough of *L.*, in the county of *Y.*, miller, and *Steed*, late of *B.* aforesaid, yeoman, on, &c. and continually afterwards until, &c. were and still are overseers of the poor of the township of *B.*, in the borough aforesaid, duly appointed according to the laws and statutes of this realm, to take care of and provide for the necessary relief of the lame, impotent, old, blind, and such other among them being poor and unable to work; and that the said *W.* and *S.*, so being such overseers as aforesaid, in the borough aforesaid, and not regarding the duty of their said office of overseers of the poor aforesaid, did on, &c. and continually afterwards until, &c., wrongfully, &c., as such overseers of the poor aforesaid, under a false and malicious pretence of finding necessary relief for the lame, impotent, old, blind, and such other in the township of *B.* aforesaid, being poor and unable to work, lodge, keep, and maintain several persons belonging to the said township of *B.*, which were lame, impotent, old, blind, being poor and unable to work, in the chamber of a certain cottage in the township of *B.*, which chamber during all the time aforesaid was not only dirty, &c., but was also by the want of necessary and proper repairs of the window therein, laid open and exposed to the coldness and severity of the weather, to the great damage of the said several lame, &c., to the evil, &c. and against the peace, &c. — On a motion to quash this indictment, it was contended, first, That the names of the several poor persons who had been aggrieved ought to have been set out; and secondly, That it was not an indictable offence in overseers to put poor people in a dirty room; that it was the duty of the paupers to clean their rooms; and that if the windows were broken, they had a summary remedy by application to a magistrate. — ASHHURST J. It is a settled rule, that the Court will never quash indictments for perjury, nuisances, or any serious misdemeanors; but leave the party to his remedy by demurrer, or compel him to plead. The objections here can only be to the form; for the offence alleged is inhumanity and endangering the lives of the poor. — BULLER J. The rule laid down by *Ashhurst J.* is to be found in (a) *Hawkins*; and the Court will never do otherwise, except on a clear and indisputable ground. And I am by no means disposed to think, that either of these objections would prevail on demurrer or in arrest of judgment. The last is abandoned; and it seems to me that the omission of the names and numbers is not here material; though in the case cited, that of a toll, which might be exacted from all the King's subjects, to know in how many instances extortion had been practised, is necessary to a just admeasurement of the punishment: but here, where the abuse consists in lodging several poor of a parish in a filthy unwholesome cottage-chamber without windows,

(a) 2 Hawk. P.C. 367

the numbers in the chamber of a cottage cannot be very many; and the persons abused, the objects of the charitable provision of the law, are of a particular denomination, and, though not individually named, are rendered sufficiently certain: and perhaps (but on this I give no opinion) this might be the best way of charging the offence. It does not appear that there is any other room in any other cottage in the parish set apart for the use of the poor; and the parish are certainly not compellable to erect workhouses, but may maintain and employ their poor at their own homes. If any thing can be made of this point, it is a defence in evidence at the trial. — Rule discharged.

385. *Simmons v. Wilcott*, N. P. H. T. 40 G. 3. 3 Esp. 91. — This was an action of assumpsit, against the defendants, as churchwardens and overseers of the poor of the parish of I., for meat, drink, &c. found and given for one *Thomas Shaw*. The case in evidence was, that S., who was carter to a Mr. W., residing at M. P. (not within the parish of I.), had been thrown from the cart, within the parish of I., and severely bruised; so much so as to render it unsafe to remove him. He was brought to the plaintiff's house, where he was kept and attended for 10 days, until he recovered. For this, and money paid to the nurse, &c. the present action was brought. — *Shepherd* stated it to be a question of very great importance, as it was to determine, Whether a person, not a parish-officer, who afforded relief to a person under the pressure of immediate want, who came within the description of casual poor, could call upon the parish-officers to be reimbursed the expences he might have incurred in the necessary relief of such person? Before he went into the question of their liability in point of law, without any express promise, or direction to take care of the person requiring relief, he proved that when S. was brought to the plaintiff's house, he (the plaintiff) sent to one of the overseers to inform him of it. The overseer directed the person who brought the message to go to the beadle; and also desired him to assist in taking care of the man. It appeared that S. was a weekly servant to Mr. W.; and that, after he had recovered, the plaintiff applied repeatedly to Mr. W., to pay him for the expences incurred in taking care of S.; and sent him in a bill amounting to 8*l.* 18*s.* 6*d.*: Mr. W. offered him 5*l.* 5*s.*, which he refused to take; and he then applied to the parish-officers, and sent in a larger bill to them; it also appeared, that after the man had recovered, the vestry had made an order, stating, "That as an encouragement to humanity, they had ordered *Simmons* 5*l.* 5*s.*; but, at the same time, protested against their liability "to reimburse him for the expences incurred, knowing S. to be a servant of Mr. W., and conceiving Mr. W. liable; and that "5*l.* 5*s.* was merely voted as a voluntary donation, or reward "for his humanity:" this sum the plaintiff also refused to accept, and brought his action against the defendants, as parish-officers, for all the expences incurred. — LORD ELDON. The questions in this case are, 1st, Whether *Simmons*, in point of law, has a demand against the parish-officers, either from the liability imposed upon them by law to take care of casual poor, or by express agreement; and, 2dly, Whether, having such demand, he has relinquished it, and bound himself to adhere to the demand he first made against W., as the master of S.? The case is new to me. It has been

Parish officers are bound to take care of casual poor; and if a person, not a parish officer, take care of a person coming within that description, and for whom the parish officers would be liable to provide, he has a right to recover against them the expences incurred on such an occasion.

decided, that if a servant in husbandry has received relief from the parish-officers, they cannot recover it against the master, as not being of that description of servants for whom the master is bound to provide; but that if he was of that description, the parish-officers could recover. My Lord *Kenyon* has ruled, that when a servant, living under the roof of his master, falls sick, the master is liable for medicines provided for the servant, if his illness has not been the consequence of his own misconduct or debauchery. If *S.* had been a servant of that description, *W.* would have been liable; but it does not follow that because *W.* might be liable, the parish-officers are thereby excused. It comes to this point, Was the person relieved within the description of casual poor? If he was, the parish-officers are bound to take care of him: a common person would not; but if a common person does take care of him, on the liability of the parish-officers, I think he has a right to recover against them. With respect to the application, in the first instance, to *W.*, the plaintiff might have reasoned thus: "I will try to get the money from *W.*, in order to relieve the "parish." That alone will not discharge the parish-officers; there must have been some express abandonment of his claim against the plaintiffs, and an admission that he would look to *W.* alone. He has acted imprudently, perhaps wrong, in sending in a bill to the parish-officers larger than the one he sent in at first to *W.*; and he must be bound by the first bill; but even if you should think 8*l.* 18*s.* 6*d.* too much, and that 5*l.* 5*s.* is sufficient; if under all the circumstances and the law, as I have stated it, you should be of opinion that the parish-officers are liable, I think you must give a verdict for 5*l.* 5*s.*, notwithstanding the order of vestry; for I do not think the order of vestry, protesting against their liability, and offering it as a voluntary kindness, can be considered as a tender of so much.

Where a pauper had his leg accidentally fractured in one parish, and was conveyed to the next house in an adjoining parish, and was confined there, and visited by the overseers and attended by the surgeon who attended the parish poor, with the knowledge of the overseer: Held, that the surgeon might have assumpsit against the overseer for the expences of the cure, for there was not any obligation against the

386. *Lamb v. Bunce*, T. T. 55 G. 3. 4 M. & S. 275. — *Assumpsit* for a surgeon's bill. At the trial before *Dallas J.* the case was thus: One *S.*, an under-carter to a farmer in *W.* parish, met with an accident in driving his master's team, by having the waggon run over him, in the parish of *H.*, by which one of his legs was fractured, and he was otherwise bruised. He was immediately conveyed to the nearest and most convenient house, which was a public-house, situate in the adjoining parish of *E.*, and distant about half a mile from the spot where the accident happened. *S.* not being in a condition to be removed to his master's, the plaintiff, who was a surgeon, and generally employed to attend the poor of *E.*, was sent for, but it did not appear by whom, and he attended him daily from that time for upwards of two months, and until *S.* recovered. During the period of his attendance the defendant, who was the overseer of *E.*, frequently visited *S.*, and knew that he, the plaintiff, attended him, and, when *S.* was fit to be removed, took him in a cart to his master's, at *W.* *S.* was not a parishioner of *E.* There was evidence that the plaintiff's charges were such as are usually termed pauper charges. It was objected for the defendant, as if this were a question between the two parishes of *E.* and *H.*, which of the two was liable; that by law the parish in which the accident happens to a pauper is bound to sustain the expences of his cure, and not the parish into which he is conveyed from necessity. To which it was answered, that

the parish in which he is from necessity found sick, from the consequences of the accident, is, in effect, the parish where the accident happens; and as this was said to be a new question, the learned judge directed a verdict for the plaintiff, giving the defendant leave to move for a nonsuit. — LORD ELLENBOROUGH C.J. The pauper was to be considered as casual poor; wherever his infirm and indigent body was found, to have his necessities provided for by them. That was the parish of *E.*, and I consider that, when the parish officer visited the pauper, according to his duty, and knew that the plaintiff, who was generally employed for the poor, was in attendance upon him, and did not repudiate his attendance, he in effect commanded it. It cannot be a matter of dispute, in point of law, and I could wish it were so understood, that, where time is not afforded for procuring an order of justices, the law raises an obligation against the parish where the pauper lies sick, as casual poor, to look to the supply of his necessities; and if the parish officer stands by and sees that obligation performed by those who are fit and competent to perform it, and does not object, the law will raise a promise on his part to pay for the performance. Mr. *Shepherd* has argued that a moral obligation is not sufficient to raise an implied promise to a third person, but I think this case is out of that objection, because the defendant, by not repudiating the plaintiff's attendance, did that which is equivalent to a previous request. As to the objection, that the parish of *H.* was the place where the accident and injury arose, there is no pretence for saying, that there is an exclusive liability attaching to the parish upon that account: there is no reason for connecting the place where the accident happened with the liability. — *LE BLANC J.* There is no doubt that if the parish officers had sent for the plaintiff to attend the pauper, he would have been bound so to do; for here the plaintiff was in the habit of attending the parish poor, therefore he was not a stranger, but a person pointed out by the parish as the person to attend to this duty. He does attend, and this with a full knowledge of the parish officer, who does not make any objection on his part; consequently the parish officer must be taken to have assented to it. Therefore there is quite sufficient to raise the presumption of a previous request. *PER CURIAM.* — Rule discharged.

parish where the accident happened to pay these expenses, and the overseers knowing of, and not repudiating the surgeon's attendance, was equivalent to a request.

387. *Groome v. Forrester*, T. T. 56 G. 3. 5 M. & S. 314. — Trespass for assault and false imprisonment against the defendants, justices of the peace for the town and liberties of *W.*, in the county of *S.* — Plea not guilty. At the trial before *Holroyd J.*, there was a verdict for the plaintiff, damages 5*l.*, with liberty to be defendants to move to enter a nonsuit. A rule nisi for this purpose having been obtained, *Taunton* was heard against the rule on a former day in this term, and *Jervis* in support of it. — *Ex. adv. vult.* — LORD ELLENBOROUGH C. J. This was a motion to set aside a verdict against the defendants, justices of the peace for the town and liberties of *W.*, in the county of *S.*, in an action for false imprisonment, and to enter a nonsuit. The imprisonment complained of, was the commitment of the plaintiff to the common goal at *Shrewsbury*, under the warrant of the defendants as magistrates, founded upon a conviction of the plaintiff as late overseer of the parish of *Broseley*, in that county; which conviction was had before the defendants under the 17 G. 2. c. 38., against the

A conviction by two justices under statute 17 G. 2. c. 38. upon complaint of the overseers of a parish against the late overseer for refusing and neglecting to deliver over to them a certain book belonging to the parish, called, *The Bastardy Ledger*, convicting him of the said offence,

and adjudging that he should be committed to the common gaol, to be safely kept until he should have yielded up all and every the books concerning his said office of overseer belonging to the parish, was held void as to the adjudication respecting the imprisonment for excess, the same extending beyond what was previously required of the person convicted, and a warrant of commitment founded on this conviction, and directing the gaoler to keep him in the terms of the adjudication, was also holden void *in toto*, for which trespass and false imprisonment would lie against the justices, although the conviction had not been quashed.

(a) § 2.

(b) *Ante*, pl. 266.

plaintiff, for not delivering over to the succeeding overseers of the parish a certain book belonging to the parish called *The Bastardy Ledger*, in breach of his duty under that statute, which required him to deliver over all such sums of money, goods, chattels, and other things, as should be in his hands, to such succeeding overseers. In case of his refusal or neglect so to do, the statute (a) authorizes two or more justices of the peace to commit him to the common gaol, until he shall have paid and yielded up such monies, goods, chattels, and other things in his hands. The conviction, as far as relates to the withholding of the particular book in question, the offence charged in the information, is correct. After finding him guilty thereof, it proceeds to adjudge that *Thomas Groome* (the plaintiff and late overseer,) for his offence aforesaid, (that is in not delivering over the particular book, *The Bastardy Ledger*,) be forthwith committed to the common gaol at *Shrewsbury*, to be safely kept "until he shall have yielded up all and every the "books concerning his said office of overseer belonging to the said "parish." That is, the adjudication and the warrant of commitment follow the adjudication, and of course directed the gaoler to keep G. until he should have yielded up all and every the books concerning his office of overseer; thereby, in effect, casting upon the gaoler the function of inquiring and determining what were "all and every the books concerning the office of overseer," upon the yielding up of which the gaoler was to discharge his prisoner, instead of requiring the gaoler to detain his prisoner (as it should have done) until he should have yielded up the particular book specified and described in the information, and for the non-delivery of which he was convicted. Such a commitment was certainly not authorized either by the letter or the spirit of the act of parliament, and subjected the prisoner to the risk of an imprisonment for an indefinite period, viz. until he had complied with a condition of greater extent than was imposed by the act of parliament, and where the gaoler, who should have to detain him under the warrant, had no adequate means of judging whether his prisoner should have, in fact, complied with the terms of such condition, and, of course, whether he was entitled to be discharged or not. This, it will be observed, is a conviction and commitment on the ground of a supposed contumacy, but the defendant could have been guilty of no contumacy in respect of the non-delivery of any book or thing than that book which alone he had been required to deliver, viz. *The Bastardy Ledger*. The conviction and commitment, therefore, in respect of a supposed contumacy to any greater extent than that in which obedience had been previously required from him, must of course be unfounded. Previously to commitment for refusing to do a thing, there must have been a charge and proof, and the party cannot be committed "until he does "something" which is not charged and proved upon him, that he has previously refused to do. Assuming that the warrant is in this respect illegal and void, the question is, Whether it be therefore void *in toto*? and if it be, Whether the defendants, as committing magistrates, are liable to an action of trespass and false imprisonment for having committed the plaintiff thereupon? And that it is void *in toto*, the case of *Milward v. Caffin* (b), is an authority. There GOULD J., in the absence of *De Grey C. J.*, said,

"It is fairly and candidly conceded, that if one of the rates be illegal, the whole warrant is bad, and I take the first to be illegal for assessing the plaintiff beyond the extent of his occupation. All that related to the assessment of lands not in the occupation of the plaintiff, was *coram non judice*, the justices therein exceeded their jurisdiction and their determination is a nullity." In 2d Inst. 52. there are to be found several good rules in respect to commitments, the fifth of which is, "The warrant or *mittimus* containing a lawful cause, ought to have a lawful conclusion, viz. and him safely to keep until he be delivered by law, &c. and not until the party committing doth farther order." Likewise, in 2d Inst. 591. there is a farther rule: "Now, as the *mittimus* must contain the cause, so the conclusion must be according to law, viz. the prisoner safely to keep until he shall be delivered by due order of law, and not until he that made it shall give other order, or the like." The case of *The Mayor and Churchwardens of Northampton, Carth. 152.*, is a leading case upon the proper form of conclusion of a commitment, until a particular act should be done by the party committed. That case was thus. — The mayor of Northampton committed the churchwardens for refusing to account before him, and the warrant of commitment concluded in the common form, viz. "until they be duly discharged according to law;" and all this appearing upon the return to a *habeas corpus*, the Court held the commitment void, because the warrant ought to have been thus concluded, viz. there to remain until he shall account, as the statute 43 Eliz. c. 2. doth appoint. And the difference is, where a man is committed as a criminal and where only for contumacy (as in this case) in refusing to do a thing required, &c.; for in the first case, the commitment must be until discharged according to law, but in the latter until he comply and perform the thing required, for in that case he shall not lie till a Sessions, but shall be discharged upon the performance of his duty. Wherefore the churchwardens were discharged by rule of Court. — *Bracy's* case is an authority to the same effect, it is reported in 5 Mod. 308., 1 Salk. 348., 1 Ld. Raym. 99.; and also in the margin of *Carthew* 153. from which I cite it. One *Bracy* was committed by commissioners of the statute of bankrupts for refusing to answer, and they concluded their warrant, that he be committed to prison, there to remain "until he conform himself to our authority, and be thence delivered by due course of law;" and upon the return of a *habeas corpus* he was discharged, because this conclusion was not pursuant to the statute of bankrupts, and the mayor of Northampton's case was cited for an authority. In Lord Raymond's report it is laid down, that if he had been committed "until he should conform to their authority," in the special matter, it had been good. And of that opinion was Lord Holt; and he said that the word "submit" (which is the word in the statute, and not "conform,") does not mean an act of humble submission, but only to make answer to the question proposed. In *Salkeld's* report, the Court held the word "conform," instead of the word "submit," to be well enough, because it was of the same sense; but because the commissioners had other authorities besides that of examining, and it did not appear but that it might require a submission to them in other respects, and for that all powers given in restraint of liberty must be strictly pursued; and

in this case they had but a special authority, and must not exceed it, they held the return naught. *Yasley's case*, *Carth.* 291. was "a commitment by the secretary of state under the stat. 35 *Eliz.*, "for refusing to answer whether he was a jesuit," &c.; and on a *habeas corpus* he prayed to be bailed. The exception to the commitment was, that the conclusion thereof was, "there to remain until he shall be from thence discharged by due course of law;" when the words of the statute are, "until he shall answer to the questions," and therefore the commitment ought to be special according to the statute; and the churchwardens of *Northampton's case* was cited and relied on, and for that objection the Court held the commitment ill. Other cases might be cited to the same effect, such as *Rex v. Hall*, *Cowp.* 60. The foregoing cases are cases of discharge from commitment on the ground of an illegality apparent on the face of the warrant. The two following cases, *Baldwin and Wife v. Blackmore*, 1 *Burr.* 595., and *Crepps v. Durden*, *Cowp.* 640. establish, that in such case, that is, of warrants illegal upon the face of them for an excess of jurisdiction in the magistrate, trespass is maintainable against the committing magistrate, and this was held in the latter case, although the conviction had not been quashed. In *Baldwin and Wife v. Blackmore*, a warrant to commit the wife as an idle and disorderly person for returning with her husband to the parish from whence removed without a certificate, was holden to be void, and that trespass lay for the imprisonment under it. So, where the warrant ought to be to imprison for a month, and it is until discharged by due course of law. *Crepps v. Durden*, *Cowp.* 640., was a conviction in four penalties for exercising his ordinary calling of a baker on a *Sunday*. As there can be but one offence on the same day, it was held an excess of jurisdiction, for which an action would lie before the convictions were quashed. There the question immediately before the Court was, Whether an objection could be made to the legality of a conviction before it was quashed? and it was held that it might. Upon these authorities, and the reason of the thing, we are obliged to pronounce that the commitment made in pursuance of the said adjudication, in this case, as well as the adjudication itself, in respect to the imprisonment being in this particular a clear excess of jurisdiction, was not warranted by law, and that the imprisonment thereunder was a trespass in the committing magistrates, for which this action is maintainable, which we cannot but regret, as the facts of the case would have authorized a commitment, if the warrant had been framed in a manner conformable to the powers of the magistrates under the statute. The consequence is, that the rule *nisi* for setting aside the verdict must be discharged.

Where a pauper residing in the parish of A, received during illness a weekly allowance from the parish of B, where he was settled: Held, that an apothecary who had attended the

388. *Wing v. Mill*, *M. T.* 58 G. 3. 1 B. & A. 104. — Action for work and labour as a surgeon and apothecary. Plea, general issue. At the trial before *Holroyd J.* it appeared, that the defendant was overseer for the parish of S., and that this action was brought by the plaintiff to recover the amount charged in his bill for professional attendance on one R. a pauper, who during 12 months' illness (induced not by any accident, but by gradual decay) received a weekly allowance of 4s. from the parish of S., which was the place of his settlement, but during the whole of the plaintiff's attendance on him he was actually resident in the

parish of *E.*, where he died. After this the defendant desired the plaintiff to make out his bill to the overseers of *W.* parish, and said, that he should be paid, and upon these facts a verdict was found for the plaintiff. — LORD ELLENBOROUGH C. J. In this case both the legal and moral obligation obtain. The parish of *W.* have, by their weekly allowance admitted, that they were bound to provide for the pauper, and the defendant, one of the overseers, after the pauper's death, expressly desired the plaintiff to send his bill, made out to the overseers, and promises that he shall be paid. The case of *Watson v. Turner* (a) is decisive on the subject, and I have no doubt that the plaintiff is entitled to recover. — BAYLEY J. I am of the same opinion. If the payment of 4s. per week had not been paid by the parish officers of *W.*, *E.* parish would have removed the pauper to the place of his settlement, and, in that case, the former parish must undoubtedly have provided him medical attendance. The conduct of the defendant, as the overseer of *W.* amounts to an acknowledgment on his part, that the plaintiff had attended at the defendant's wish, and upon his responsibility. I therefore think that *W.*, and not *E.*, was bound to maintain the pauper, and that the promise made after his death is founded on a legal as well as a moral consideration, and, therefore, affords a good ground of action. — ABBOTT and HOLROYD Js. concurred. — Rule refused.

pauper may maintain an action for the amount of his bill against the overseers of *B.*, who expressly promised to pay the same.

(a) Bul. N. P. 129. 147. 281.

389. *Proctor v. Manwaring*, *M. T.* 60 G. 3. 3 B. & A. 145. — Debt for penalties under 55 G. 3. c. 137. § 6. The first count of the declaration stated, that the defendant was duly appointed overseer for the borough of *L.*, and that, during the time he retained such appointment, as aforesaid, he did, in his own name, provide, furnish, and supply, for his own profit, certain goods for the support and maintenance of the poor of the said borough. The other counts varied the statement of defendant's liability. Plea, general issue. At the trial before *Richardson J.* there were several charges made against the defendant, which received an answer in fact. But there was one wholly uncontradicted in evidence. *A. W.*, a pauper of the borough, was in the habit of receiving 8s. 6d. per week relief; and it was proved, that the defendant, who kept a chandler's shop, paid her allowance on several occasions, partly with goods from his shop, and partly in money. The learned judge told the jury, that, in his opinion, the act was intended to prohibit overseers from supplying the parish generally; or perhaps it might include a case where a pauper had been constrained to take a part in goods, but he left it to them to say, whether or not this had been consented to voluntarily by the pauper; telling them, that, if that were so, he was of opinion, that it was clearly not within the act of parliament. The jury were of opinion, that the pauper had voluntarily consented to take part in goods and part in money, and found a verdict for the defendant. — ABBOTT C. J. This being a penal clause in this act of parliament, must not be extended by construction, and though there may be cases suggested, falling within the mischief intended to be prevented by the legislature, et, if they have not used proper words, so as to include them within the prohibition, it is not competent for the Court to extend the act of parliament to them by construction. Now the words are, "That no churchwarden or overseer shall, under the

The statute 55 G. 3. c. 137. § 6. only prohibits churchwardens or overseers from supplying the workhouse, or the poor of the parish generally; and therefore, where an overseer, receiving an order for the relief of *J. S.*, an individual pauper, paid *J. S.* part in money, and, by the consent of *J. S.* gave her the remainder in goods from his shop: Held, that he was not liable to the penalty of 100*l.* imposed by the act.

And see *Steel v. Smith*, 1 B. & A. 94.

"pain of forfeiting 100*l.*, either in his own name, or in the name
 "of any other person, provide, furnish, or supply, for his own
 "profit, any goods for the use of any workhouse, or otherwise,
 "for the support and maintenance of the poor in any parish,
 "&c. for which he shall be appointed overseer, during the time
 "of his appointment; nor be concerned, directly or indirectly,
 "in furnishing or supplying the same, or in any contract relat-
 "ing thereto." Now it appears from the expression "for the
 "use of any workhouse," and afterwards from that of "the sup-
 "port of the poor," that the poor generally, and not individuals
 of that class, are intended to be included within those words.
 An overseer, therefore, cannot contract for the workhouse, nor
 can he, if there should be an inclement season, during which it
 might be considered desirable to furnish a general supply of coats
 or blankets to the poor, be the person to furnish such articles to
 the parish. The exception seems to me to fortify this view of
 the case, by which two justices are authorized, in case no person
 can be found within a convenient distance competent to undertake
 the supply of such articles for such workhouse *for the use of the
 poor there*, by certificate, to permit an overseer to contract and
 agree for such supply. So that it seems to have been the in-
 tention of the legislature, only to prohibit overseers from being
 contractors for the general supply of the poor; and the word
 "there" distinctly shows, that this part of the clause is appli-
 cable only to the poor who are in the workhouse. This, there-
 fore, narrows the construction of the previous part of the clause.
 I think, therefore, that the case which was proved does not fall
 within the act of parliament. It would have been very easy for
 the legislature, had they so intended it, to have said, that it should
 not be lawful for an overseer to deliver to any pauper articles in
 lieu of money ordered for relief, but they have not so expressed
 themselves. I am, therefore, of opinion, that there should be no
 rule granted in this case. — BAYLEY J. I am of the same opinion.
 The object of the act was, to prevent imposition upon the parish
 by the overseers. If, therefore, goods are required for the parish
 workhouse, or if any other general supply for the poor is wanted,
 the overseer is not to furnish that supply; but it seems to me,
 these are the only cases contemplated by the act. Where a
 pauper carries an order for relief to the overseer, he has a right
 to demand it in money; and, in case of refusal, has a speedy
 remedy, by complaint to the justice who made the order. If the
 conduct of the overseer in selling the articles be oppressive, the
 justice may punish him for it; but, if the overseer be absolutely
 prohibited from selling, it might be a hardship upon the pauper.
 For there being no words distinguishing the case of money laid
 out by the pauper after full payment by the overseer, from that
 of a payment partly in goods and partly in money, a pauper
 might be compelled, in case the overseer kept the only shop in
 the village where the articles were supplied, to go to a very in-
 convenient distance, for the purpose of purchasing them from
 some one else. — HOLROYD J. However desirable it may, per-
 haps be, to prevent the mischief attending such cases as the
 present, yet we cannot extend a penal statute so as to bring this
 case within it. The words of the statute appear to me applicable
 only to a general supply of the poor by the parish officers. This

case, therefore, does not fall within the act. — *BEST J.* concurred. — Rule refused.

390. *Rex v. Woodman*, *E. T.* 2 G. 4. 4 B. & A. 507. — The parish of *M.* consists of several separate and distinct townships, each of which has its own overseers, and maintains its own poor. One of them is the town of *M.* Beyond the period of living memory, the church and parish affairs of the parish of *M.* have been managed by a select vestry, consisting of 24 persons, of whom 16 have been taken from the inhabitants of the town of *M.*, and the remaining eight from the farmers in the country parts of the parish. The inhabitants constituting the select vestry have generally continued in office for life, unless they happened to leave the parish or decline to serve. In case of vacancy, the place of a town's member has been usually filled up by the remaining 16 belonging to the town, and the place of a country member by the remaining seven belonging to the country part of the parish; or as many of each set as may happen to be present on such occasions. None of the inhabitants, besides the 24, and the rector or curate, ever attended these vestry meetings. On the 19th of *March* 1820, a notice signed by the churchwardens and overseers of the township of *M.* was duly given, stating, that a meeting of the gentlemen of the 24 acting for the township of *M.* would be held on the 4th *April*, for the establishing of a select vestry for the concerns of the poor of the township of *M.*, and on the 4th *April* a meeting was accordingly held by 12 of the 16 persons acting for the township of *M.*; at which meeting the defendant and 19 other substantial householders or occupiers within the township were nominated and elected to be members of such select vestry, and an order of a magistrate was subsequently made, by which such 20 persons were appointed to act as a select vestry, for the care and management of the poor of the township of *M.* This order having been removed into this Court, a rule *nisi* was obtained for quashing it, on the ground, that the persons appointed to constitute this select vestry were not chosen according to the provisions of the statute 59 G. 3. c. 12 at any general meeting in vestry of the inhabitants of the township, but at a meeting of a select body only. These several facts having been disclosed upon affidavits, — *ABBOTT C. J.* I am clearly of opinion, that the 16 persons who constituted the ancient select vestry, for the township of *M.* cannot be considered the inhabitants of the parish in vestry assembled within the meaning of the 59 G. 3. c. 12. The power to appoint a select vestry is expressly given to the inhabitants in vestry assembled; and here it was exercised, not by the inhabitants in vestry assembled, but by certain persons possessing some of the powers of the inhabitants in vestry assembled. It is not necessary in this case to decide what the inhabitants may do, but I have no difficulty in saying that, in my opinion, the inhabitants at large may assemble and appoint a select vestry for the care and management of the poor, not interfering with any of the rights of the ancient select vestry. The rule for quashing the order must therefore be made absolute. — Rule absolute.

391. *West v. Andrews*, *H. T.* 3 G. 4. 5 B. & A. 328. — Debt on 55 G. 3. c. 137. § 6. for a penalty of 100*l.* Declaration stated, that defendant, on 1st *June* 1820, was overseer of the poor of *West-hampstead*, in *Sussex*, and during the time he was overseer, furnished

A select vestry for the management of the parish affairs existing by ancient custom, cannot elect another select vestry for the management of the poor within the 59 G. 3. c. 12.

I. S. being the master of the workhouse, appointed by, and receiving orders

from, the guardians of the poor of the parish of *W.* bought provisions from *A*, one of such guardians : Held, that *A* was liable to the penalty of 100*l.*, imposed by the 55*G. 3. c. 137. § 6.*

And see *Pope v. Backhouse*, 8 Taunt. 239. Where a farmer who furnished the produce of his land to the poor of the parish of which he was churchwarden, at a fair market price, was held liable to penalties under the 55*G. 3. c. 137. § 6.*

A guardian of the poor, appointed under 22*G. 3. c. 83.* is within the 55*G. 3. c. 137. § 6.* notwithstanding the former act, § 42., imposes a penalty for the supply of provisions for the poor by such guardians. Where a count stated that *A. B.* supplied the poor of the parish of *W.* with provisions, and the evidence was, that he supplied the poor of the parish of *W.* and other parishes in a workhouse : Held, first, that it was no variance, the proof being larger than the allegation. Secondly,

and supplied in his own name, goods and provisions for the support of the poor. The second count described him as a person in whose hands the collection of the rates was. Plea general issue. At the trial before *Burrough J.*, at the last assizes for the county of *Sussex*, it appeared that defendant was one of the guardians of the poor for the parish, and that the poor-house there was under their controul, being managed by one *Griffith*, who was the master of the poor-house appointed by the guardians, and receiving his orders from them. *G.* provided for the poor, having a contract at so much *per head*, and found all the meat, &c. In the year 1820, he bought of the defendant, then being such guardian of the poor, four live sheep for the use of the poor, and paid him for them. The learned Judge thought this not a case within the act, and directed a non-suit. *Gurney* having in last Michaelmas term obtained a rule *nisi* for a new trial. — *ABBOTT C. J.* I am of opinion, that this is a case within the act of parliament. Here the defendant has made a bargain for the supply of provisions with a third person, who has the contract of providing for the poor, and whom the defendant, in conjunction with others, appoints to his situation, and whose conduct it is his duty to superintend. Under these circumstances, it seems to me, that all the mischief which was contemplated by the legislature would arise, if we were to hold that it was lawful. I am therefore clearly of opinion, that the defendant's case falls both within the words and spirit of the act of parliament, and that the rule for a new trial must, therefore, be made absolute. — Rule absolute.

392. *West v. Andrews*, *M. T. 3G. 4. 1B. & C. 77.* — Debt on 55*G. 3. c. 137. s. 6.* for a penalty of 100*l.* The first count stated, that defendant was overseer of the poor of the parish of *W.* in *S.*, duly appointed in that behalf; and that during the time he retained such appointment, he did in his own name provide, furnish, and supply for his own profit, certain goods and provisions for the support and maintenance of the poor of the said parish, for which he was so appointed overseer as aforesaid. The second count stated, that defendant was a person in whose hands the collection of the rates for the relief of the poor of the said parish was placed, under and by virtue of certain acts of parliament. The third count stated, that he was a person in whose hands the providing for, ordering, management, controul, and direction of the said parish was placed by virtue of certain acts of parliament. The 4th, 5th, and 6th counts were similar to the 1st, 2d, and 3d, varying only in stating, that the defendant was directly concerned in furnishing and supplying for his own profit, certain other goods, &c. The 7th, 8th, 9th, 10th, 11th, and 12th counts, varied in stating, that the supply was for the use of a certain workhouse, of and belonging to the said parish of *W.* amongst other parishes, for the support and maintenance of amongst other poor being in the said workhouse, the poor of the said parish of *W.* The 13th count stated, that the defendant was a person amongst others in whose hands the providing for, ordering, controul, and direction of the poor of the united parishes of *W., B., M., and W.,* was placed by virtue of certain acts of parliament; and that the defendant in his own name, provided, &c. certain goods for the support and maintenance of the said united parishes. The 14th count stated, that he was directly concerned in providing, &c. goods for the

support and maintenance of the said poor of the said united parishes, &c. The 15th and 16th counts stated the supply to be for the use of a certain workhouse, of and belonging to the said united parishes, &c. for the support and maintenance of the poor of the said united parishes, &c. The defendant pleaded the general issue. At the trial at the last *Lent* assizes for the county of *S.*, before *Wood B.*, it appeared that the defendant was guardian of the poor of the parish of *W.*, and that the poor of that parish, together with the poor of four parishes, including those mentioned in the declaration, were jointly maintained in a workhouse, but the parish of *W.* was regularly united according to the provisions of 22 G. 3. c. 83. s. 43. with only one of those parishes. The supply of the provisions in question was to the master of the workhouse, who, in 1820, bought of the defendant four sheep for the use of the poor, and paid him for them. The master of the workhouse had a contract for providing for the poor at so much a head, and found all the meat, &c. The learned judge was of opinion, that this was a case within the statute pursuant to the decision of this court in *West v. Andrews* (a); and the plaintiff obtained a verdict for one penalty which was entered on the third count. *Marryat*, in *Easter* term last, obtained a rule *nisi* for entering a *nonsuit*, on the ground that the evidence was not applicable to that count, or to any other count in the declaration, the supply being in fact for the poor of the united parishes in the workhouse, and only four parishes being stated as united in the declaration, whereas the proof was either of a legal union of two, or an union *de-facto* of five parishes. — *ABBOTT C. J.* In this case it is clear, that if the evidence given at the trial be sufficient to sustain any one of the counts of the declaration, there ought not to be a *nonsuit* entered. The first objection is, that this was provided for, and must fall under the 22 G. 3. c. 83. s. 42. But if the 55 G. 3. c. 137. s. 6., does not extend to a case like the present, a great many words in it would be altogether insensible. For that clause speaks of persons having the providing for, ordering, management, control, or direction of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places. It therefore clearly extends to persons having the control of the poor in more parishes than one, and applies, as it seems to me, to the present case. The next objection is, that the character of the defendant is not properly described. He is described in the third count as a person in whose hands the providing for, ordering, management, controul, and direction of the poor of the parish of *W.* was placed; how is that allegation sustained? It appears, that under *Gilbert's* (b) act, where more parishes than one are united, every guardian of the poor, appointed under that act, has and is invested with all the powers and authorities given to overseers of the poor by any act or acts of parliament, and is to all intents and purposes, except with regard to the making and collecting rates, an overseer of the poor for the parish for which he is appointed guardian. If then this defendant was lawfully appointed guardian of the poor of the parish of *W.*, he is a person in whose hands was placed the control of the poor of that parish for which he was so appointed guardian. The objection, therefore, that his character is improperly described, cannot prevail. The last objection is, that in the third count the supply is stated to have been for the sup-

that the objection as to a variance between the allegation of a supply of the poor and the proof of a supply of the poor in the workhouse, not being taken at *nisi prius*, could not be afterwards available.

(a) *Ante*, p. 391.

(b) 22 G. 3. c. 83.

port and maintenance of the poor of the said parish; whereas by the proof it appears to have been for their support and maintenance in the workhouse, and it is urged that as the 55 G. 3. c. 137. § 6. describes these as two distinct classes, the allegation should have strictly conformed to the proof. I am by no means satisfied that this objection, even if taken at *nisi prius*, could have prevailed. But I am clearly of opinion, that a mere formal objection of this sort, if not so taken, cannot be available afterwards. I think, therefore, that all the objections are insufficient, and that this rule must be discharged. — BAYLEY J. The 55 G. 3. c. 137. § 6. seems to have been intended as a general provision, and the legislature could not have meant that there should be one rule for parishes united under 22 G. 3. c. 83., and another in cases of parishes not so united. It may be true, that this case would have fallen under *Gilbert's* act, previously to 55 G. 3., but the latter statute, when passed, contained a general provision, within which, this case, if not excepted, would fall. I can see no reason for any such exception being made, and in the absence of any express exception, it seems to me that no exception can be implied from *Gilbert's* act. I am also of opinion, that a guardian appointed under 22 G. 3. is clearly a person having the ordering, management, control, and direction of the poor of the parish for which he is appointed, and that he falls under the provisions of the 55 G. 3. The guardians have the power of recommending the master of the workhouse, and may make agreements with respect of the diet of the poor over which they are to exercise a strict control. It is the duty, therefore, of each of them to take care that wholesome food is supplied. Now all these objects will be defeated, if the guardian, who is to inspect the conduct of the governor, supplies the workhouse with provisions. The case, therefore, is clearly within the mischief to be remedied. As to the objection that the declaration does not sufficiently describe the persons for whose care and support the goods were supplied, it seems to me that the allegation is substantially proved, for if a person supplies the poor of any parish, it is immaterial whether he supplies them in or out of a workhouse; and if he supplies a workhouse which contains the poor of the parishes, A, B, C, and D, he does, in fact, supply the poor of each of these parishes. This rule must therefore be discharged. — HOLROYD J. I am of the same opinion. The 55 G. 3. c. 137., is not confined to cases not falling under *Gilbert's* act. The words seem intended to include cases like the present, and we ought to give them a liberal construction, so as to remedy the mischief contemplated. It is contended, that inasmuch as this defendant was only guardian of the poor, he was not charged with the maintenance of the poor of this particular parish, and that the allegation to that effect in the declaration is not proved. It appears, in fact, that he had a control over the maintenance of the poor of the parish. And as to the description of his character in the declaration, it is sufficiently proved by the evidence; for in pleading it is not necessary that the allegation should be as extensive as the proof. Where a prescription is pleaded for a right of common for sheep, and the proof is of a right for all commonable cattle, it is sufficient; and so here the allegation is, that he had the ordering and direction of the poor of one parish; and the proof is, that he had the

ordering and direction of the poor of that parish and others. As to the third objection, I agree with my Lord Chief Justice, that it not being taken at the trial it cannot prevail now. — *BEST J.* concurred. Rule discharged.

393. *Nightingale v. Marshall*, *M. T.* 4 *G.* 4. 2 *B. & C.* 319. — Case for a false return to a writ of *mandamus*. The declaration stated, that on the 22d of *November* 1821, the office of sexton of the parish of *Saint Mary, Whitechapel*, became vacant; that the plaintiff was nominated and elected to the said office by a majority of the persons entitled to vote; that the defendants being churchwardens of the said parish, ought to have admitted the plaintiff to the said office, but they refused so to do; and in return to a writ of *mandamus*, issued on the 11th of *February* 1822, commanding them to admit the plaintiff to the said office, they falsely returned that the said plaintiff was not duly nominated and elected to the said office. At the trial before *Abbott C. J.*, at the sittings in *Middlesex*, after last *Trinity* term, a verdict was found for the plaintiff with nominal damages, subject to the opinion of the Court upon the following case: The office of sexton for the parish of *Saint Mary, Whitechapel*, in the county of *Middlesex*, is an ancient office, and the right of election is in the inhabitants of the said parish, paying church and poor's rates, in vestry assembled. In *November* 1821, the office became vacant, and on the 22d of *November* a public meeting was duly holden for the election of a sexton. There were two candidates, the plaintiff and one *J. W.* While the election was proceeding, several inhabitants of the parish, entitled to vote, claimed a right to give more than one vote under the 58 *G. 3. c. 69. § 3.*, by which it was enacted, "That in all such vestries every inhabitant present, who shall by the last rate, which shall have been made for the relief of the poor, have been assessed and charged upon, or in respect of, any annual rent, profit, or value, not amounting to 50*l.*, shall have and be entitled to give one vote and no more; and every inhabitant there present, who shall in such last rate have been assessed or charged upon, or in respect of, any annual rent or rents, profit or value, amounting to 50*l.* or upwards, whether in one, or in more than one sum or charge, shall have and be entitled to give one vote for every 25*l.* of annual rent, profit, and value upon or in respect of which he shall have been assessed or charged in such last rate; so, nevertheless, that no inhabitant shall be entitled to give more than six votes." At the close of the election the numbers were, for *J. W.* 639, and for the plaintiff 691; but if a plurality of votes was admissible in the parish of *Whitechapel*, with respect to the election of a sexton, pursuant to the 58 *G. 3. c. 69. § 3.*, such a number of votes was tendered as was sufficient to give the plaintiff a majority of votes. The defendants were churchwardens of the parish at the time of the election, and they admitted *J. W.* to the office; and in return to a *mandamus*, commanding them to admit the plaintiff, they returned that the plaintiff was not duly nominated and elected; and the only question in the case is, Whether, under the circumstances hereinafter stated, a plurality of votes was admissible at the said election, pursuant to the statute 58 *G. 3. c. 69. § 3.*, so as to entitle the inhabitants, paying rates as aforesaid, at the election of a sexton to give more than one vote? In point of fact, the poor-rates are not assessed, and never have been assessed, upon all the inhabitants uniformly, according to an

In the parish of *W.*, the poor-rates, according to an ancient custom, had always been made without respect to the value of property in the parish, but according to the supposed ability of the party charged: Held, that persons so rated, were not rated in respect of any annual rent, profit, or value, within the meaning of the 58 *G. 3. c. 69. § 3.*, and therefore were not entitled to more than one vote at vestry meetings, although rated upon more than 50*l.*

equal pound-rate; but the rate purports to be made, and, according to an ancient custom in the parish, always has been made, by the discretion of the vestry, without respect to value, but according to the ability of the party charged, such ability being estimated with reference to property, whether in the parish or out of it. In some instances the property is stated in respect of which the party is charged; but in a great majority of cases the property is not stated, and where it is stated, the rate is not in proportion to the rent of the property; for example,

Rent.		Poor's rate.	Church-rate according to an equal pound-rate.
£.		£. s.	
40	<i>L. Turner</i> for two cooperages	5 11	
40	<i>Alexr. Mann</i> for house -	10 15	
50	<i>Mr. Lucas</i> for house -	9 10	

ABBOTT C. J. I give no opinion as to the validity of the rates in question. My opinion is founded entirely on the third section of the 58 G. 3. c. 69., which provides for a plurality of votes. By that section it was enacted, "that every inhabitant, who shall by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, profit, or value, not amounting to 50*l.*, shall have and be entitled to give one vote and no more; and if upon an annual rent, profit, or value, amounting to more than 50*l.*, he shall have one vote for every 25*l.* of annual rent, &c. upon which he is assessed." Looking at this rate, I am clearly of opinion, that no person in the parish of *St. Mary, Whitechapel*, is rated upon or in respect of any annual rent, profit, or value. If the rate were so made, it must be proportioned to the amount of the rent, profit, or value, in respect of which it is imposed. It is not so proportioned; and it therefore appears not to have been imposed in respect of the property mentioned in the act, but in respect of some ability to contribute to the relief of the poor, measured by some other standard. I am therefore of opinion, that the provisions of the 58 G. 3. c. 69., respecting a plurality of votes, do not apply to the parish in question; the plaintiff, consequently, was not duly elected to the office of sexton, and a nonsuit must be entered. — BAYLEY J. I am of opinion that this parish is not within the operation of the 58 G. 3. c. 69. § 3. The general rule is, that there shall be an equal pound-rate upon the property in the parish, therefore all persons having an estate equal in value contribute the same sum. The value of their property is the criterion of the rate. It was the intention of the legislature, by the statute referred to, to increase the power which each inhabitant would have at the vestry-meetings, in proportion to the burthen borne by him. This parish cannot have the benefit of that act, for the custom (which may be legal) to make the rate in a particular mode, prevents the property of any individual in the parish being a criterion of the burthen borne by him. We cannot then say that the rate is imposed in respect of any annual rent, profit, or value; and unless that be so, the provision for a plurality of votes does not apply. — HOLROYD J. The rate stated in this case is not such as to bring the parish within the provisions of the third section of the 58 G. 3. c. 69. To be within that, the parties must be assessed

upon some annual rent, profit, or value: the rate does not show that they have been so assessed. Certain rents are stated, but the inequality of the rate shows that it is not imposed in respect of those rents; nor does it appear to have been imposed in respect of any profit or value, much less annual profit or value. It is left uncertain in respect of what it is assessed, and therefore is quite insufficient to make the 58 G. 3. c. 69. § 3. applicable to their vestry-meetings. — *BEST J.* If the inhabitants of *St. Mary, White-chapel*, are anxious to avail themselves of the provisions in the vestry act, they must alter their mode of rating. By that act it is not sufficient that the parties should be rated at 50*l.* or upwards; to have more than one vote, they must be rated in respect of annual rents, profit, or value. Now it is stated in the case that each inhabitant is rated according to the discretion of the vestry, and the rate itself shows that the amount of it is not regulated by the amount of property in the parish. If so, it cannot be made according to the principle laid down in the act; and therefore no person can, by virtue of that act, be entitled to a plurality of votes. I therefore agree that a nonsuit must be entered. — Judgment of nonsuit.

394. *Skinner v. Buckee, T. T. 5 G. 4. 3 B. & C. 6.* — This was a penal action founded on the 55 G. 3. c. 137. § 6. At the trial before *Abbott C. J.*, it appeared that the defendant was a coal-merchant, and that he was duly appointed overseer of the liberty of *Saffron-Hill, Hatton-Garden, and Ely-rents*; and during the time that he was overseer, a quantity of coals were provided for the workhouse, nominally by one *Gaubert*, who was the brother-in-law of the defendant, but that the latter had an interest in the coals. It was doubtful upon the evidence, however, whether he or *G.* made any profit by them. The Lord Chief Justice was of opinion, that unless the defendant acted with a view to profit, it was not a case within the 55 G. 3. c. 137. § 6., and he told the jury to find for the defendant, if they were of opinion upon the evidence that the defendant did not send in the coals with a view of making a profit. The jury found for the defendant. A rule nisi for a new trial had been obtained in last *Hilary* term. — *ABBOTT C. J.* We are all of opinion that this rule must be discharged. The question in this case arises upon the construction of the 55 G. 3. c. 137. § 6., the words are, that “no churchwarden “or overseer of the poor, either in his own name, or in the name “of any other person or persons, shall provide, furnish, or supply, for his or their own profit, any goods, materials, or provisions for the use of any workhouse, or otherwise for the support “or maintenance of the poor in any parish or place for which he “shall be appointed such overseer, during the time which he shall “retain such appointment, nor shall be concerned directly or “indirectly in furnishing or supplying the same, or in any contract or contracts relating thereto, under the penalty of 100*l.*” Now, if the overseer himself in this case had supplied all the provisions required for the support of the poor at prime cost, and not with a view to his own profit, it is quite clear that he would not have committed any offence within the words of this part of the act of parliament: that was laid down by *Gibbs C. J.* in *Pope v. Backhouse*. (a) Inasmuch, therefore, as an overseer providing in

By statute 55 G. 3. c. 137. § 6., no churchwarden or overseer of the poor, either in his own name, or in the name of any other person shall supply for his own profit any goods, materials, or provisions for the use of any workhouse, or otherwise, for the support or maintenance of the poor in any place for which he shall be appointed overseer, during the time he shall retain such employment, nor shall be concerned directly or indirectly in supplying the same, or in any contract or contracts relating thereto, under the penalty of 100*l.*: Held that an overseer who sup-

plied coals indirectly for the use of the poor, was not liable to any penalty unless he did it with a view to his own profit.

his own name the poor of his parish with all the provisions and goods required for their support, would not be liable to any penalty provided he made no profit, it cannot be supposed that the legislature intended that the same overseer who is concerned directly or indirectly in any contract for supplying any part of the provisions, however small, should be liable to a penalty, although he derived no profit from it. That would involve a manifest contradiction. I think, therefore, that the words *for his own profit* must be taken to over-ride the whole clause, and that the legislature intended that no overseer, for his own profit, either in his own name or in that of any other person, should supply the poor with provisions, nor be concerned directly or indirectly in any contract relating to it. — Rule discharged. (a)

By statute 17 G. 3. c. 3. § 2, it is enacted "that overseers of the poor shall permit inhabitants of the parish to inspect rates at all seasonable times, and shall upon demand forthwith give copies of the same to any inhabitant of the parish;" and by § 3. "if any overseer shall not permit an inhabitant to inspect the rate, or shall neglect to give copies thereof as aforesaid, such overseer, for every such offence, shall forfeit and pay to the party aggrieved the sum of 20*l*. : Held, first, that in order to entitle a party to sue for the penalty under the statute, he must show that he has sustained an injury by the act of the overseer: Held, secondly, that there must be a demand to inspect the rate

995. *Spenceley v. Robinson*, H. T. 5 & 6 G. 4. 3 B. & C. 658. — Debt on the statute, 17 G. 2. c. 3. The declaration stated that the plaintiff was an inhabitant of the township of C., and that the defendant was one of the overseers of the poor of that township; that on the 26th of March 1824, the churchwardens and overseers of the poor of that township made a rate for the relief of the poor, which was afterwards duly allowed by two justices; and that the churchwardens and overseers after the allowance of the rate, gave public notice thereof in the church. The declaration then stated that the plaintiff requested the defendant, as such overseer, to permit him, the plaintiff, to inspect the rate, and tendered him 1*s*. for the same, yet that the defendant neglected and refused to permit the plaintiff to inspect the rate, contrary to the form of the statute, &c. whereby defendant forfeited 20*l*. The second count stated that plaintiff, at a reasonable time, to wit, on &c., at &c., demanded of the defendant, so being such overseer, a copy of the rate, and was ready and offered to pay to the defendant at and after the rate of 6*d*. for every 24 names thereof, yet that the defendant refused to give him the copy. At the trial before Bayley J. at the Summer Assizes for the county of Y., 1824, the following appeared to be the facts of the case: The plaintiff was an inhabitant of the township of C., and the defendant was overseer of that parish. The rate in question was made on the 26th of March, allowed on the 27th, and published on the 28th. About eight o'clock on the 19th of April the plaintiff sent his son to the defendant to request that he would come to him at his, plaintiff's, house; the defendant went and saw the plaintiff and his attorney: the plaintiff asked the defendant to allow him to inspect the rate, and tendered him 1*s*. on that account. The defendant said that he durst not allow it; he was ordered not to do it. The plaintiff's attorney then asked him for a copy of the rate. The defendant then went away and related what had taken place to the Rev. Mr. N., a magistrate, and stated that he had not shown the rate, because he was informed that he was not obliged to show it. Mr. N. told him that he was, and pointed out the clause in the act of parliament, and advised him to go back immediately and show the plaintiff the rate, and take a copy of it next morning as early as possible to the attorney. The defendant did return to the plaintiff's house in about two hours after the inspection of the rate had been demanded, and offered to show him the

(a) And see *Wells v. Iggulden*, T. T. 5 G. 4. 3 B. & C. 186.

rate; and the defendant made out a copy that night and delivered it to the plaintiff's attorney early the following morning. The latter said that it was too late, for the plaintiff could not appeal to the next Sessions. The defendant said that he would waive all objection to the notice. The defendant, on the 17th of *April*, had met the plaintiff's attorney in *H. market*, which is about eight miles from *C.*, and he then asked him if he had a copy of the rate, for he was employed by the plaintiff and wished to see one. The defendant said that he should have one if he was entitled to it; and the attorney replied that he should be at *C.* on *Monday* the 19th, and should expect to have one. Upon this evidence the learned judge told the jury that although there was a refusal at one time to permit an inspection of the rate, the question was, Whether that refusal was not done away with by what subsequently took place? The defendant, within two hours after the refusal, having offered to allow the plaintiff to inspect the rate, and having delivered a copy to the plaintiff's attorney early next morning. A party was bound to give an overseer a reasonable time to do what the law required. The learned judge then told the jury that if they thought that the defendant had complied with the demand in a reasonable time, the defendant was entitled to a verdict. The jury found a verdict for the defendant. A rule *nisi* was obtained for a new trial in *Michaelmas* term, upon the ground that this verdict was against evidence, and also upon the ground that the learned judge misdirected the jury, inasmuch as a permission to inspect the rate having been once refused, a right of action vested in the plaintiff. — *ABBOTT C. J.* My doubt in this case has been, not whether the learned judge left the proper question to the jury, but whether he ought to have left any question at all to the jury. I think that the plaintiff ought to have been nonsuited. The 17 *G. 2. c. 3. § 2.* enacts, "That the churchwardens and overseers shall permit all the inhabitants of the parish, township, or place to inspect every such rate at all seasonable times, paying 1s. for the same, and shall upon demand *forthwith* give copies of the same, or any part thereof, to any inhabitant of the parish, township, or place, paying at the rate of 6d. for every 24 names." The person to whom an inspection is to be allowed, or a copy to be given, must be an inhabitant. The defendant, therefore, was not bound to attend to the request made by the attorney of the plaintiff on the 17th. The next clause enacts, "that in case any overseers shall not permit any inhabitant or parishioner to inspect the said rates, or shall refuse or neglect to give copies thereof, such churchwarden or overseer for every such offence shall forfeit and pay to the party aggrieved, 20*l.*" The latter words plainly import that the penalty is to be given to the party who has sustained an injury by the act of the overseer. Now, here the plaintiff sustained no injury, for he was not deprived of his appeal by what took place, as it might have been entered at the next Sessions, and the justices had power to adjourn it to a subsequent Sessions. The question left to the jury was, Whether the defendant had within a reasonable time complied with the request of the plaintiff to be permitted to inspect the rate, or to have a copy? Before any right of action could vest in the plaintiff by reason of the defendant's not permitting him to inspect the rate, a request must

made, at a reasonable time and place; and, *semble*, that the house of the overseer is the place at which the demand ought to be made. Thirdly, although the statute says, that copies shall, upon demand, be *forthwith* given, yet the overseer is entitled to a reasonable time for making them out.

have been made for such permission at a reasonable time and place. The house of the overseer, where he may be fairly supposed to keep the rate-book, must be the reasonable place for making such a request or demand. Now, in this case, the overseer, without having any notice that the rate-book is required, is desired to come to the plaintiff's house, and the demand to inspect the rate-book is made at a place where it was known he could not have the book with him. That was an unreasonable place for making the request. I think, therefore, that there was in this case no legal request or demand to inspect the rate-book. Then, as to the copy of the rate, assuming that the demand of a copy made by the solicitor in the presence of the plaintiff to have been a demand by the latter, the defendant was entitled to a reasonable time to comply with that demand. For although the statute requires the overseer to furnish the copy *forthwith*, that word must receive a reasonable construction, so as to give the overseer an opportunity of making the copy required. Here the copy was made during the night, and delivered the following morning. That demand was complied with in a reasonable time, and the plaintiff ought to have been nonsuited. It has been contended that the question was not left to the jury, Whether the demand was made at a reasonable time and place? but the question submitted to them implied as much, and the learned judge must be taken to have left to them to say whether the defendant had within a reasonable time complied with a legal demand, viz. a demand made at a reasonable time and place. I think that the direction was right, and that the verdict was right also; but I strongly incline to think that the judge ought to have nonsuited the plaintiff. — HOLROYD J. It seems to me that the plaintiff is not entitled to recover. I think that the demand to inspect the rate was not sufficient, because it was not made at a reasonable time and place. I think also that the plaintiff was not a party grieved, because he did not sustain any injury by the refusal to allow him to inspect the rate. The being an inhabitant does not make him a party grieved. It has been held, under the bankrupt laws, that unless the party be a creditor, he is not a party grieved within the meaning of these statutes. — BAYLEY J. concurred. — Rule discharged.

A pauper being casually in the parish of A, met with an accident which disabled her, and which required immediate medical assistance. The constable of that parish improperly removed her to her own (which was the adjoining) parish, and sent for the surgeon of that parish to attend her: Held, that it

396. *Tomlinson v. Bentall*, T. T. 7 G. 4. 5 B. & C. 738. — This was an action of assumpsit brought to recover the amount of a surgeon's bill. At the trial before *Graham B.* the following appeared to be the facts of the case: The plaintiff was a surgeon and apothecary residing at *M.* The defendants in 1824 were overseers of the poor of the parish of *H.* In October in that year, one *P. Bannister*, a poor woman belonging to the parish of *M.*, returning from *W.* to *M.* in a cart, about 10 o'clock at night, was thrown out of the cart in the parish of *H.*, near to a public-house there called the *Hoy*. Her thigh was broken, and she was otherwise much hurt. The constable of the parish of *H.* being sent for, desired her to be sent out of that parish. She was placed again in the cart and taken over a bridge (which divides the parishes of *H.* and *M.*); the driver of the cart then remonstrated with the constable, and told him that he did wrong in removing her from *H.* Upon this the constable ordered her to be taken back to *H.*, and said he would go and consult a neighbouring magistrate. The magistrate, who was also churchwarden of the

parish of *H.*, advised him to take the woman to the nearest public house, and to lay her thigh straight and send for a doctor. The landlord of the *Hoy*, which was the nearest public-house, refused to take her in. The driver of the cart then suggested to the constable to take her to the parish poor-house. The constable said he did not know where they would put her. The pauper, who had been exposed to the cold air for some hours, said, "If you do not know where to put me, for God's sake take me home." The constable desired a bystander to pay attention to the request made by the pauper to be sent home, as it was likely they might be called to speak to the fact upon some future occasion. She requested not to be put under the care of the plaintiff (who was apothecary of the parish of *M.*), but of one *Thorpe*, who was apothecary of *H.* The constable then desired her to be taken to *M.* The driver of the cart refused to take her back to *M.*, unless the constable would give him a note that she should be taken care of by the parish of *H.* The constable said he would, but did not. He accompanied her to her house at *M.*, where she arrived about two o'clock in the morning, and asked *Thorpe*, the apothecary to the parish of *H.*, to attend her, and told him the pauper was at her own house. *Thorpe* said, that in that case he, as the apothecary of *H.*, had nothing to do with her. The constable then sent for *Tomlinson*, and the latter attended her for several weeks. Upon this evidence, it was insisted at the trial, first, that as there was not any express promise by the parish officers of *H.* to pay for the medical attendance given in the parish of *M.*, the defendants were not liable; and *Atkins v. Banwell* (a), and *Wing v. Mill* (b), were cited. The learned judge was of opinion, that there was some evidence to go to the jury that the magistrate, who was churchwarden, and the constable, felt the obligation to afford the pauper relief, and that the constable actually undertook to pay the plaintiff for his attendance; and, secondly, he was of opinion, that as the accident which happened in the parish of *H.* was one which required immediate care and attention, it was the duty of the officers of that parish to have taken the pauper to that house nearest to the place where the accident happened, and where they could procure accommodation for her, and to have provided medical assistance immediately; and if, as humanity required them to have done, they had sent for a surgeon to attend her in that parish, they would clearly have been liable, and that they could not by neglecting their duty, and removing her to another parish, relieve themselves from that liability which the law had cast upon them. The jury having found a verdict for the plaintiff for the amount of his bill, a rule nisi for a new trial was obtained, upon the ground that there was not an express promise by the defendants to pay the plaintiff, and that, under the circumstances of the case, the law would not imply a promise on their part.—ABBOTT C. J. I am of opinion that this rule must be discharged. The pauper met with an accident in the parish of *H.*, an accident which entirely incapacitated her from going to her own place of abode, and, therefore, if she had been taken to any house in *H.*, as she ought to have been, and relief had been administered to her there, it is clear that the parish officers would have been liable for the expences of her cure. *Res v. The Inhabitants of St. James in Bury St. Edmund's* (c), is an authority to show that it would not have been competent to the

was the duty of the parish officers of *A.* to have taken the pauper to the nearest convenient house in *A.*, and to have provided medical attendance there, and that they could not, by improperly removing her to another parish, relieve themselves from the liability which the law had in the first instance cast upon them, and that they were therefore liable to pay the surgeon's bill.

(a) 2 East. 505.

(b) *Ante*, pl. 388.

(c) *Post*, vol. ii. pl. 698.

parish officers to have removed her as a person coming to settle in *H.* If she had been taken to a house in *H.*, therefore, the parish officers would have been under a moral and legal obligation to provide assistance for her. One of the parish officers did very properly recommend her to be taken to the nearest public-house which was in *H.* The occupier of that house did not think proper to open his doors and receive her. A proposition was then made to take her to the poor-house, and upon the way thither, some conversation took place which excited in the mind of the poor woman (who at that time had been lying in the cold some hours), an alarm, whether, when she arrived there she should be properly treated, and she said, "For God's sake take me to my own house;" and she was then taken home. The first proposal was, to take her to her own parish, but on a remonstrance by the driver of the cart the constable desisted. She was, however, ultimately taken to her own house. The constable of *H.* sent to the plaintiff, and desired him to take care of her. As the parish officers of *H.* must have paid for the medical attendance if she had remained there, it seems to me, that the removal from that parish to another (although it was her own) coupled with the fact, that the surgeon was called in from the parish of *M.*, does not relieve the inhabitants of *H.* from the obligation to which they would have been clearly liable, if this woman had been taken to some house in that parish and taken care of there, and for these reasons, I think, that the verdict was right. — BAYLEY J. I am of opinion, that the verdict was right. It is of very great importance, with a view to the protection to which the poor are entitled, that it should be fully understood upon whom, under such circumstances as those which have occurred in the present case, the legal obligation to provide medical attendance, attaches. I do not put the case upon the ground of moral obligation, or upon the ground of the constable's having sent for and employed the plaintiff, but I put it upon the ground, that the law imposed a legal obligation upon the parish officers of *H.* to employ a surgeon for the cure of the pauper. I think it is highly prejudicial to the rights of the poor, that when an accident has happened the question should be agitated, or even pass in the minds of those persons in whose power the sufferer is of necessity placed, whether a burthen, which must fall somewhere, must be borne by them, or can by any contrivance be shifted to others. It is of importance, therefore, that it should be certain upon whom the obligation to provide medical attendance rests. For otherwise the consequence will be, that poor persons, who ought not to be removed from the place where they have met with an accident, will, perhaps, at the risk of their lives, and certainly with great aggravation of their sufferings, be removed to a distance. In this case the pauper met with the accident in *H.*, which incapacitated her from moving herself from the spot where it happened. The best and most obvious course would have been to have done that which the magistrate of the place suggested should be done, viz. to have removed her into the public-house; but if she was not placed there, she ought to have been placed in the poor-house, or, at all events, she ought to have been sent to some house in the parish. I am of opinion, that when the parish officers refused her an asylum in that parish

where she was entitled to have it, and forced her to go to her own house, all the attendance given by the plaintiff in the parish of *M.*, in consequence of the wrongful conduct of some of the parishioners of *H.*, is to be considered as if it had been given in the parish where the accident happened, and as if the house which she occupied had been in the parish of *H.* In *Lamb v. Bunce* (a), Lord *Ellenborough* speaks not of a moral but of a legal obligation attaching on the parish where the pauper lies sick or disabled, to provide assistance; he says, "It cannot be a matter of dispute in point of law, and I could wish it were so understood, that where time is not afforded for procuring an order of justices, the law raises an obligation against the parish where the pauper lies sick, as casual poor, to look to the supply of his necessities;" and therefore, upon that authority I consider, that as in this case the party met with the accident in *H.*, that was the proper place for her to be in, and that the law raised a legal obligation in the parish officers of *H.* to give her relief. Lord *Ellenborough* afterwards says, "If the parish officer stands by, and sees that obligation performed, by those who are fit and competent to perform it, and does not object, the law will raise a promise on his part to pay for the performance." Now, although the attendance was not given in the parish of *H.* but in the parish of *M.*, yet, as one of the parish officers of *H.* knew that the attendance was indispensably necessary, and that the removal from *H.* to *M.* had been wrongful, it seems to me exactly the same as if the parish-officers had stood by and seen the attendance of the surgeon upon the pauper in the parish of *H.* There was a subsequent case of *Gent v. Tomkins* (T. T. 1822), in this Court, which seems to support the principle, that the law casts the obligation of providing medical attendance for a pauper disabled by an accident upon that parish where the accident has happened. In that case, the action was brought, not against the overseers of the parish in which the accident happened, but against the overseer of the parish to which the pauper belonged, and the Court intimated a very strong opinion, that it was not properly brought against the overseer of the latter parish. It may sometimes happen, that the parish in which the accident happens may not be the proper place to give relief. It may happen, that the parish officers, without entering into the question, what are the limits of particular parishes, will do that which ought to be done immediately; namely, carry the pauper to the house nearest the place where the accident happens, instead of carrying her to a considerable distance. In *Lamb v. Bunce* the impression of the Court was, that the parish in which the house was situate, was the proper parish to have given the relief; but without deciding that point, I am of opinion, that in this case, inasmuch as the accident happened in the parish of *H.*, and that was the place where, under all the circumstances, the pauper was entitled to receive surgical assistance, the plaintiff is entitled to look to the parish of *H.* for payment of his bill. — HOLROYD J. The accident having happened to the pauper in the parish of *H.* it was the duty of the officers of that parish to provide medical assistance for her there. They might have done that, although the occupier of one public-house refused to receive her. But I think they could not, by removing her elsewhere, shift upon

other people that burden which the law casts upon themselves; and that, whether they procured the medical assistance to be given *in* the parish or *out* of the parish, they are liable. — LITTLEDALE J. I am of opinion, whenever any accident happens to a poor person, of such a serious nature as to render removal out of the parish dangerous or improper, I think the law casts an undoubted obligation on that parish to administer all necessary relief. If the pauper in this case had actually been taken to a house in *H.*; and resided there while the surgeon was attending her, that parish would have been liable for her cure; but it appears to me that, under the circumstances of this case, she was improperly taken out of the parish, and that any officer or inhabitant taking her to another parish, where it was improper to take her, cannot, by so doing, release the inhabitants of the former parish from the obligation. I think, therefore, that this rule ought to be discharged. — Rule discharged,

CHAPTER V.

RATING PARISHES IN AID.

- I. *The Statute.*
- II. *The Form of the Rate.*
- III. *Rating Parishes within the Hundred.*
- IV. *Rating Parishes within the County.*
- V. *Of the Districts or Divisions liable to be assessed.*

I. *The Statute.*43 *Eliz. c. 2. § 2.*II. *The Form of the Rate.*397. **THE** case of the parish of *St. Rumbald's*, *M. T. 2 Jac. 2.*

Skin. 258.—The parish of *St. R.* in *Colchester* being surcharged with poor, the justices made an order that two other parishes in *C.* should pay relief to the poor within the parish, viz. the one 5*s.* a week, and the other 8*s.* a week, and that the overseers should collect it. This order being removed by *certiorari*, it was moved to quash it, because it had not pursued the direction of 43 *Eliz. c. 2. § 3.*, which says, the justices shall assess "others of other parishes," and therefore it ought to have described the particular persons assessed, and not the parishes generally. — But **THE COURT** were of opinion, that the order was well enough, and according to the right course; for the justices are only to assess the *quantum*, and then the rate is to be made by the overseers of the poor of the parish.

An order rating others in aid is good, though it do not pursue the words of the statute.

The justices are to order the *quantum*, and the overseers to make the rate.

An order rating others in aid must state that the parish was unable to provide for its own poor; or use words *tenement*.

An order rating parishes in aid may either charge particular persons, or the whole parish for a *sum in gross* for the relief of the whole year.

S. C. Sett. & Rem. 53.

The order must not only aver that the poor parish was not able, but the justices must thereon so adjudge.

398. *Rex v. Little Glen*, *H. T. 5 W. & M. Comb. 241.*—It was moved to quash an order made by two justices that the inhabitants of *L. G.*, in the county of *L.*, should pay a yearly sum to *W.*, because it was only said that *W.* was at *great charge* in maintaining the poor, but not that they were *unable*, pursuant to the statute. — **THE COURT.** The justices at Sessions made an order upon an appeal, in which it was stated, that the parish was *oppressed*; and it was held that it implied *inability*.

399. *Rex v. Knightly*, *M. T. 6 W. & M. Comb. 309.*—Upon an order made by two justices for contribution to the relief of a poor parish, it was ruled, that the justices may either charge particular persons or the whole parish. But in this case the order charged a *sum in gross* to be levied for the whole year; and it was objected, that this form of ordering relief was unreasonable, for the ability of the parish to provide for the poor may within that time change. — The order, however, notwithstanding this objection, was confirmed.

400. *Cobbett v. St. Mary, Lincoln*, *Vin. Abr. tit. Poor, 431.*—It must appear that the parish which pays in aid of another was not able to pay sufficient sums, and there must be an assertion and adjudication that it appeared so to the justices who make the order.

An order taxing a parish in aid, stating that it was made at the Sessions, is void; for such order must originate with two justices. *S. C. Foley, 32. S. P. Comb. 25. Viner, 430.*

The order must state the poor parish to be in the same hundred with the parish rated.

An order rating one vill in aid of another, reciting that the rich vill did not pay so much as the poor vill, without saying that either was rated to the poor, is bad for uncertainty.

The order must state a sum certain, and not a rate at so much in the pound.

See *Rex v. Knightly, ante, pl. 323.*

The order must show that the contributory parish is out of the parish to which the aid is given. See *quere*, and see 2 East, 417.

An order made by two justices "to contribute until we see fit to order to the contrary," is bad. *S. C. Strange, 700. 2 Sess. Cas. 52. Foley, 59.*

401. *Anonymous, E. T. 10 W. 3. 5 Mod. 397.*—An original order was made at the Sessions to this effect: "IT APPEARING to this Court, that the parish of D., in the hundred of W., being overburthened with poor, and that the parish of E., within the same hundred of W., having no poor relievable within the said parish, IT IS ORDERED, that the said parish of E. be from henceforth annexed to the said parish of D., and that the occupiers of lands and tenements within the said parish of E. be chargeable and contributory towards the relief of the poor of the said parish of D. the sum of 20*l.* a year, by monthly payments, so long as the said parish shall be overburthened, and no poor within the said parish of E." A motion was made to quash this order, because it was in the nature of an act of parliament. But it was quashed because it was an original order, and therefore should have begun with two justices.

402. *The Case of the Inhabitants of Boroughfen, T. T. 9 Ann. Foley, 27.*—Upon a motion to quash an order of two justices, exception was taken, that it did not appear upon the order that the parish that is charged to aid the parish that is not able to maintain its own poor is within the same hundred; and by the unanimous opinion of THE WHOLE COURT the order was, for this reason, quashed.

403. *Anonymous, H. T. 8 Ann. Foley, 25.*—An order was made by two justices under the 43 Eliz. c. 2. § 3. The case was this: There were two vills in one parish, and the order recited that one of the vills was very rich, and the other very poor; and further, that the vill which was rich did not pay half so much to the poor as the poor vill did. It was objected, that the reason given in this order for charging the rich vill to contribute to the poor vill is uncertain, viz. because they do not pay half so much as the poor vill does, without showing that either vill pays any thing to the poor.—By THE COURT. This order must be quashed for the uncertainty.

404. *Rex v. Telcombe, T. T. 5 G. 1. Str. 314.*—PER CURIAM. The order for the contributory parish to make a rate at 6*d.* in the pound is ill for uncertainty; it should have been to raise such a certain sum; and the order was, therefore, quashed.

405. *Rex v. Boroughfen, T. T. 12 G. 1. Foley, 26.*—An order was made upon one parish to relieve the poor of another. An objection was taken, that it did not appear by the order but that B. is within the parish of St. J. in aid of which they are rated.—PER CURIAM. You must show that B. is out of the parish of St. J., or the justices have no jurisdiction: and for this objection the order was quashed.

406. *Case of the Borough of Marlborough, B. T. 12 G. 1. 16 Vin. 410.*—An order was made by the justices of the borough for the parish of St. P. to pay to the officers of St. M. 20*l.* weekly, "till we the said justices shall see fit to order to the contrary." It was objected, First, That it does not appear that the parish of St. M. is overburthened with poor: but that was over-ruled, for the order follows the words of the statute. Secondly, It is said, they are justices of the town and borough; and it appears upon the order, that the parish of St. M. is within the borough, but not

within the town and borough; but by the Court, they are justices of both. Thirdly, The order is, "until we shall see fit to order to the contrary;" whereas the act does not give the justices any such authority, and it is in effect making a perpetual order; for if one of the justices die, or be removed, no other justice can alter it: and it was quashed upon this last objection.

407. The case of the *Parish of St. Peter and St. Paul, T. T. 12 G. 2. Str. 1114.*—Two justices, reciting the inability of the parish of *St. M.* to maintain its own poor, ordered the churchwarden of *St. P.* to assess, raise, and levy 60*l.* for the maintenance of the poor of the other parish. An objection was made to their ordering such a gross sum; but the Court, upon the authority of *1 Vent. 350. Salk. 480. Comb. 309.*, held it well in that respect. But the order was quashed, because the justices had delegated their power of assessing and rating the parishioners to the churchwardens and overseers; whereas by *43 Eliz. c. 2. § 3.* the justices are to make the rate on all or on particular persons.

The order must show that the assessment was made by the justices; for the justices cannot delegate their authority. *Viner, 341.*

III. Rating Parishes within the Hundred.

408. *Anonymous, Vin. Abr. tit. Poor, 431.*—In a city, when one parish is not able to relieve their poor, the next parish, being able, is to aid them with a weekly allowance; but when the cause ceases, such allowance is to cease also.

The next parish within the hundred is first to be rated in aid.

409. *St. Benedict v. St. Peter's, H. T. 8 Ann. 11 Mod. 269.*—*Attorney-General* moved to quash an order of two justices of the peace, for the county of the city of *Norwich*, made upon the statute *43 Eliz.* His exception to the order was, that it does not appear that the parishes taxed are within the hundred; and two justices, by the act, have not power to tax the county, but only the hundred, or the parishes within the hundred. — *POWELL J.* This is not *casus omissus* out of the statute; and though the two justices have not power, here being no hundred, yet the Sessions have a jurisdiction, and may tax the county of the city in part, or at large. To which the rest agreed, and quashed the order, being made by two justices only.

In an order made by two justices, it must appear that the parishes taxed are within the hundred, and therefore if it only state them to be within the county, it is bad; for the Sessions must tax the county. *S. C. Foley, 48.*

when the hundred is incapable of affording relief.

410. *Rex v. Eastchurch, H. T. 9 W. 3. 2 Salk. 480.*—An original order was made at Sessions, setting forth, that whereas the parish of *D.* was over-burthened with poor, and that the parish of *E.* had no poor, the parish of *D.* should be annexed to the parish of *E.*, and that the occupiers of land there should contribute 20*l.* per annum, by equal monthly payments, to *D.*, as long as that should be over-burthened with poor and *E.* have none. To this order it was objected, that the justices of peace cannot alter and annex parishes to one another; and secondly, that the Sessions cannot make an original order. — *HOLT C. J.* There are two ways by the *43 Eliz. c. 2.* to make one parish contribute to the maintenance of the poor of another, viz. the justices may tax particular persons in aid to that parish which cannot relieve its own poor, or they may assess the whole parish in a certain sum, and leave it to the churchwardens, &c. to levy the same on particular persons (a),

Justices may tax particular persons, or the whole parish. *Comb. 342. 309. S. P. Skin. 258.*

(a) See the opinion of the Court in the tax ought to be laid on the whole parish, and not on particular individuals.

Justices may charge particular inhabitants who are owners of lands in an extra-parochial place within a parish to aid another parish in relief of its poor.

Comb. 6. 242. 303.

1 Vent. 350.

Lutw. 1566.

2 Bulst. 354.

Skin. 258.

2 Sess. Cas. 53.

which was well done in this particular case; but so much as concerns the annexing of parishes is void, and the rest good. — But THE COURT took time to advise.

411. *Rex v. Occupiers of Land in Boroughfen*, T. T. 12 G. 1. MSS. — An order was made by two justices, on the statute 43 Eliz. c. 2. § 3., to charge some *particular inhabitants* in an extra-parochial place in *B.*, to contribute to a rate for the relief of the poor of the parish of *St. J.*, which was not able to provide for its own poor. — It was moved to quash this order, on the ground that the statute 43 Eliz. c. 2. only authorises the justices to tax any *other parish* within the *same hundred* with the parish which makes the complaint; but that by the present order the rate is charged on particular land-owners in *B.*, who have no method of reimbursing themselves, when all the inhabitants of *B.* ought to have been taxed; for otherwise the justices, out of private resentment, may throw the load of such a rate upon particular persons, and free the rest, which would be distributing unequal justice. Besides, *B.* has a numerous poor of its own, and other persons in the hundred are at little or no charge from their poor, so in reason these parishes should have been charged with this rate, as the best able to pay it. They also objected, that the order was wrong, because it did not state that *B.* was a parish, but merely that it was a place *situate and lying within* THE HUNDRED *aforsaid*. — THE COURT were of opinion, that this was a hard and unreasonable order, since particular persons of other parishes would be much exposed to the mercy of the justices; and that such a power was hardly to be trusted with them, for they may rate some and excuse others altogether as well able to pay. But the words of the statute are very strong. There are two ways by the 43 Eliz. c. 2. to make one parish contributory to the poor of another, viz. the justices may either tax particular persons in aid to the parish which cannot relieve its own poor, or they may assess a whole parish in a particular sum, and leave it to the churchwardens and overseers to levy a contribution, which may be in gross by adjacent parishes yearly. — THE COURT gave judgment on the *second objection*, that *B.* is not said in the order to be another parish, and for any thing that appears it may be a *vill* in the same parish of *St. J.*, or no parish at all. — And for this reason the order was quashed.

Comb. 242.

IV. Rating Parishes within the County.

An order rating parishes within the county must be made at the Sessions.

Nelson, 533.

Viner, 431.

It is not necessary that two justices should adjudge the hundred incapable to contribute before the Sessions can charge a parish out of the hundred.

412. *Anonymous*, Shaw's Just. 42. — In case a parish is not able to maintain its own poor, two justices may tax any other parishes within the hundred toward their relief; and if the hundred be not of ability to relieve these parishes, the justices in Sessions may tax any other parish or parishes within the county.

413. *Rex v. Percivall*, T. T. 3 G. 1. Str. 56. — The justices in Sessions taxed certain parishes in the hundred of *A*, in aid of the parish of *B*, in the hundred of *C*. Objection was made, that the statute gives no authority to the Sessions to charge people out of the hundred, till two justices have enquired whether any parish in the hundred can contribute; the first application to be to two justices, and the second to the Sessions. — PARKER C. J. I do not see to what purpose it would be for the justices to make an order only to adjudge that no parish in the hundred is able to contribute; we will presume the justices at Sessions are satisfied of

that: and if two justices should make such an adjudication, yet the Sessions must enquire into the truth of it; and if no order appear which charges any parish within the hundred, it is a sufficient ground for the Sessions to act. If two justices had charged any parish within the hundred, that would have stopped the Sessions from proceeding. The sufficiency of the hundred depends on this, Whether two justices have ever charged the hundred? If two justices should adjudge the hundred not able, yet if other two justices adjudge the contrary, their charge would be good, and the Sessions be ousted of their jurisdiction, notwithstanding their first determination. — *Eyre J.* Here are two jurisdictions, that of the justices and that of the Sessions, and they are both original jurisdictions: they are different in all respects; for the two justices have no power out of the hundred, nor the Sessions in it. — Order confirmed.

S. C. Salk. 480.
Foley, 48.
1 Sess. Cases,
120.
Salk. 67. 491.
1 Vent. 174.

V. Of the Districts or Divisions liable to be assessed.

414. *Rex v. Clarendon Park*, 16 Vin. Abr. 431. — When inhabitants of an *extra-parochial place* are taxed towards the relief of the poor of an *adjoining parish*, the tax must be by poll, every particular inhabitant by himself: but where it is laid upon a hundred it is otherwise, because there are officers who may proportion what every body is to pay. But at another day THE COURT held, that the reason was, because the parishes were taxable by themselves at common law, and that in the said case the inhabitants of an *extra-parochial place* may be taxed in general, and that they may proportion the particulars upon every inhabitant; or the tax at first may be laid upon every person by himself; but the justices cannot appoint two persons to do this, and that the money shall be levied on such and such; and being thus appointed, the order was quashed.

The inhabitants of an *extra-parochial place* may be taxed to the relief of an adjoining parish.
2 Salk. 486.
2 Lev. 142.
4 Mod. 157.
1 Mod. 251.
2 Mod. 237.

415. *Anonymous*, H. T. 8 Ann. Foley, 25. — Two justices made an order. The case was thus: There were two *vills* in one parish, and the order recited that one of the *vills* was very rich, and the other vill very poor, &c. It was objected, that one vill ought not to contribute to the relief of another vill, because the statute 43 Eliz. c. 2. § 3. mentions *parishes* only. — BY THE COURT. Surely this will come within the equity of the statute, though the statute only makes mention of parishes.

One of the *vills* in the same parish may be ordered to contribute to the relief of the other vill. See 13 & 14 Car. 2. c. 12.

416. *Case of St. Benedict's*, H. T. 8 Ann. Foley, 43. — An order was made by two justices to assess the parishes of St. S. and St. M., in aid of the parish of St. B., which was not able to maintain its own poor. Objection was now made, that these parishes are not within the same hundred; they are in N., where there is no hundred, and therefore the justices have no jurisdiction by the 43 Eliz. c. 2. § 3. — PER HOLT C. J. The order must be quashed.

The Sessions may tax parishes in a city. S. C. 11 Mod. 269.

417. *Rex v. Boroughfen*, E. T. 10 G. 1. Foley, 37. — An order was made by two justices to make a place chargeable to the poor of another parish. FIRST OBJECTION, That this was an *extra-parochial place*. — *Sed non allocatur*: for the act mentions any place. SECOND OBJECTION, That there was a distress-warrant granted at the same time the order was made. — PER CURIAM. Order must be confirmed.

Extra-parochial place.

Any *division* equivalent or synonymous to *hundred* is within the statute. *Foley*, 3d edit. 42. 16 *Viner*, 416. 11 *Mod.* 268.

County justices cannot rate a parish within the jurisdiction in aid of another parish lying within a borough which has an exclusive jurisdiction.

418. *Res v. Milland*, E. T. 31 G. 2. *Burr.* 576. — Two justices made an order for rating the tithing of *M.* in aid of the parish of *St. P.*, in the same county; which was confirmed at the Sessions, who stated upon their order, that the tithing of *M.* lies in the same liberty of the *soke* with the said parish of *St. P.* It was objected, that it does not appear that the places are in the same hundred (as required by the 43 *Eliz. c. 2.*); that "*liberty*" and "*soke*" are vague terms, and not equivalent to the known legal term "*hundred*;" but perhaps the liberty may extend into several hundreds. — But THE COURT did not consider themselves as bound down by the particular word "*hundred*" used in the act; but that if any *division* be called by any name synonymous or equivalent to that of *hundred*, it must be equally within the intention of the act. But having sent the matter back to the Sessions to be more particularly stated, and upon the return it appearing to be substantially an hundred, the Court affirmed both orders.

419. *Res v. Holbeck*, T. T. 32 G. 3. 4 T. R. 778. — This rule, calling upon the defendants, two justices of the county of *W.*, to show cause why a *mandamus* should not issue, commanding them to tax, rate, and assess some parish within the hundred of *H.*, in the said county, in aid of the inhabitants of that part of the parish of *D.*, which lies in the borough of *D.*, in the same hundred and county, to the support of their poor, was founded on affidavits which disclosed the following facts: Part of *D.* parish is within the borough of *D.*, and part without, but within the county of *W.* That part which lies within the borough has immemorially maintained its own poor, and had distinct overseers. The whole of the parish of *D.* and the borough are within the hundred of *H.*, in which division the defendants live and act. The particular circumstances of the place were set forth, from whence the parties making the application inferred that they were in a situation to require the assistance prayed for; the poor rates now amounted to 25s. in the pound, and being gradually on the increase from certain salt-works being discontinued there; and it was also said that the part of *D.* parish out of the borough, and the other parishes in *H.* out of the borough, were moderately assessed for the support of their respective poor. In the defendant's affidavit in answer, it was said that they had refused to interfere, because the borough of *D.* is an exclusive jurisdiction, having justices of its own, to the exclusion of the magistrates of the county; and that there were, besides this part of *D.*, three other parishes in *D.*, where the poor rates are lower than in the adjacent parishes. — LORD KENYON C. J. I perfectly agree with the counsel in support of this application, that this part of the parish of *D.*, within the borough, which is a vill, and supporting its own poor, is for this purpose equivalent to a parish. But on the great question, of jurisdiction, I differ from him. These justices having admitted that this part of the parish is in need of the assistance required, relieves us from discussing one of the points made, whether the *mandamus* should be merely to hear the complaint, or to do the act required. But the point, on which this must be decided, is that these defendants have no jurisdiction. It is admitted on all hands, that the borough of *D.* is an exclusive jurisdiction, with a *non intromittant* clause as to the justices of the county; the

justices of the county, therefore, have no authority to enter the borough. (a) This section of the act says, that if the justices perceive that any of the inhabitants of any parish are not able to levy among themselves sufficient sums, &c., the said two justices shall and may tax, rate, and assess any other of other parishes, &c. Having the allowance of all assessments, and the superintendence of the overseers' accounts, the legislature presumed that the justices would have the means of knowing the necessities of all the parishes within their jurisdiction; but they cannot have any opportunity of knowing the circumstances of those districts which lie out of their jurisdiction. And therefore, to provide for all cases that might happen, the eighth section of the act was introduced, which gives the same power to borough justices that was before given to the county justices. So that in all cases the acts of magistrates are to be confined within the limits of their respective precincts. There is one difficulty, indeed, in a case where the borough consists only of one parish. But the argument drawn from thence, to show that the county magistrates must of necessity interfere, proves too much; for there are instances of such towns being counties of themselves, *e.g.* the borough of *Caermarthen*; but in such a case it is impossible to say that the justices of the adjoining county can interfere. On the single ground, therefore, that this application was made to those who have no jurisdiction over the subject, and no means of informing themselves whether the parish want assistance or not, I am of opinion that the rule must be discharged; the application should have been made to those justices who have jurisdiction over the parish seeking relief, and also over that parish out of which the relief is to come. — **BULLER J.** There is no weight in the objection which has been made to the form of this rule, because if a *mandamus* may be granted either way, it is immaterial in what terms this rule is drawn up. But cases have been cited to show that the *mandamus* may be to compel the justices to rate some parishes generally; and if such has been the practice, it ought to be supported. The case cited from *Foley* shows, what cannot be disputed, that one vill might be taxed in aid of another. In the case of *St. Agnes, Cornwall*, this point, about rating one parish in aid of another, was not discussed: the only question there made was on the merits; and as it was made out by the affidavits that the parish seeking relief were actually in want of it, the *mandamus* was granted. But the principal question here is, Whether the justices of the county have in this instance any jurisdiction over that part of the parish of *D.* which lies within the borough? and I am clearly of opinion that they have not. It is manifest from this act of parliament that no justices can execute the third section of it but those who have jurisdiction over the parish which is in need of assistance from some other parish; and therefore the county justices cannot give the relief prayed for in this instance, out of their jurisdiction. By the 9th section of the act also it is enacted, that where any parish lies partly within any town-corporate, and partly without, the county justices, and also the head officers of such town-corporate, "shall deal and intermeddle only

(a) See the case of *Talbot v. Hubble*, 2 Str. 1154. and *Rex v. Sainsbury*, 4 T. R. 45.

"in so much of the said parish as lieth within their liberties, and "not any further." Then by this clause the two parts of the parish of *D.* are to be considered as two distinct parishes; and consequently, over that part which is the subject of our consideration, the justices for the county have no jurisdiction. The *mandamus* now prayed for is to compel the county justices to do the act: but the form of it, if it were granted at all, should be to compel them to inquire, in the first place, Whether the parish stand in need of any assistance? and to act accordingly; whereas in this instance we should be requiring them to inquire into that which they have no means of knowing. I am, therefore, of opinion, that this application should have been made to the borough justices.—GROSE J. This is a new attempt to compel the justices of the county to relieve a parish out of their jurisdiction. But they cannot give the relief prayed for, without having an opportunity of knowing that the parish without their jurisdiction really stand in need of it. The 9th section of the act is decisive against this application. This attempt is not only new, but altogether unfounded.—Rule discharged.

An order for taxing one parish in aid of another, under the statute 43 Eliz. c. 2. § 3., held well; although the two parishes, together with others, were incorporated for the maintenance of their poor, with fixed quotas of contribution between each other, under special officers, who were empowered to purchase land for the erection of poor-houses and for a burial ground; there being a proviso in the act in general terms, that nothing therein contained should extend to repeal or lessen the power of justices of the peace "to tax parishes in aid of others by virtue of the statute 43 Eliz. as fully as if

420. *Rex v. St. Helen's, in Worcester, T. T. 42 G. 3. 2 East, 417.*—An order was made by the justices at the Quarter Sessions holden for the county of the city of *W.*, grounded on the statute 43 Eliz. c. 2. § 3. By which order (removed into this Court by *certiorari*) dated 5th April 1801, and directed to the church-wardens and overseers of the poor of the parish of *St. H.*, "after reciting that complaint had been made unto that Court, that the parish of *St. A.* in the said city of *W.* and county of the same city was greatly overburthened with poor, and that the inhabitants of the said parish were unable to raise and levy among themselves sufficient sums of money for the maintenance of the poor thereof: and after further reciting that it had also been represented unto that Court that the inhabitants of the parish of *St. H.* in the said city, and county of the same city, were of sufficient ability to aid and assist the inhabitants of the said parish of *St. A.* in the maintenance of the poor thereof: that Court upon hearing (the parties), and upon due proof, &c. adjudged the said premises to be true, &c.; and did thereby in pursuance of the statute in that case made, rate and assess the said parish of *St. H.* at the sum of 1*l.* 12*s.* 8*d.* monthly, and every month, in aid of the said parish of *St. A.*: and did thereby order the overseers, &c. of *St. H.* to pay the said sum of 1*l.* 12*s.* 8*d.* to the overseers, &c. of *St. A.* from the 5th of October then instant until the 1st of April next, for and towards the purposes in the said act mentioned." It was not denied but that the order was good under the statute of *Eliz.*; but it was contested upon the ground of a local act of parliament passed in the 32 G. 3. c. 99., intituled, "An act for the better relief and employment of the poor of the several parishes within the city of *W.*, and of the parishes of *St. M.* and *St. C.*, which are partly within the city and partly within the county of *W.*, and for providing a burial-ground for the use of such parishes." That act reciting that the poor within the several parishes named, (including *St. A.* and *St. H.*) are supported at a burthensome expence, for their assistance and relief, incorporates them by the name of "the wardens of the poor of the several parishes in the

"city of *W.* and of the parishes united therewith;" and directs how the principal officers, therein called "directors," and certain other officers, shall be chosen from time to time. It then enables the directors to purchase land and erect buildings thereon for the purposes of the act, and also to purchase other land for "a burial ground, for the general use of all the parishes aforesaid in manner therein mentioned; which burial ground should be the property of the corporation, who were to have all the produce and benefit therefrom, allowing to the inhabitants of the parishes the privilege of burial there, on payment of 5s. for each corpse," &c. It enacts, that the directors shall have the management of the poor, and enables them to inclose part of the ground next the house of industry for a burial ground for such as die in the said house; and enables them generally to provide for the relief of the poor, placing out apprentices, &c. It also gives them a power to borrow money not exceeding 10,000*l.*, and to secure the interest and principal. Then, in order to raise an adequate fund for the purposes of the trust, the directors are "*empowered to fix and ascertain with as much equality and fairness as may be, such sums of money (regard being had to such average of the rates within the said several parishes as therein after mentioned), upon the said several parishes, as should be needful from time to time, for paying the interest of the money borrowed, paying off the principal, and defraying the charges and expences of maintaining the poor, and for all other the purposes of the act.*" It then directs how the quotas of the respective parishes are to be fixed, *according to the average expenditure of each parish for the five preceding years, &c.* Afterwards there is a proviso, "that nothing in this act contained shall extend, &c. to repeal, lessen, or alter the power of justices of the peace to tax parishes in aid of others by virtue of the statute 43 *Eliz.* or otherwise; but that the same powers shall be and remain as fully and effectually to all intents and purposes as if this act had never been made." The directors are also empowered to grant certificates, and to take bonds of indemnity against bastards, and are enabled to control the overseers in appealing against orders of removal of poor persons. — LORD ELLENBOROUGH C. J. This is a very plain case upon the construction of the stat. 32 *G. 3.*, which was passed for the better maintenance of the poor in the city of *W.* The several parishes of the city, which subsisted distinctly before the act, were thereby incorporated for certain purposes; but for all others they still continued to be as distinct as before. Before that act they certainly might have been rated in aid of each other under the stat. 43 *Eliz.*; and for fear it should be doubted whether the act of *G. 3.* did not do away the provision of the former act in that respect, the proviso in question was introduced, in which it is expressly saved. Then it is said that this was only intended to apply to extra parishes, and not to the parishes incorporated, but the wording is general, reserving power to the justices to tax parishes in aid of others as fully as before; that extends to all parishes. For this purpose, therefore, the incorporated parishes were still to remain independent as before, whenever the respective quotas directed to be raised under the local act were found insufficient to provide for the maintenance of their respective poor. — GROSE J. The proviso referred to expressly saves to the in-

this act had not been made."

corporated parishes the benefit of the 43 *Eliz.* in this respect as before the act of G. 3. — LAWRENCE J. The proviso is in general words; and is not narrowed, as contended for, to other parishes than those incorporated; but extends to all alike, as well those in the county at large, as those in the county of the city of *W.*, not included in the act. (a) It is said that the proviso could not be intended to include the incorporated parishes, because the money, when raised under the present order, is to be carried to different purposes than those directed by the stat. 43 *Eliz.* under which it is made. But that is begging the question: the money raised under the local act must indeed be applied as that act directs; but the money raised under the stat. 43 *Eliz.* is to be applied as that statute requires. — LE BLANC J. The argument in support of the objection has proceeded on the very ground which the proviso was intended to obviate: for without the introduction of that proviso it might have been argued that the statute had fixed certain quotas between the incorporated parishes, which were meant to be irrevocable. But the legislature having in view that cases might occur, where those quotas would not be sufficient for the maintenance of the poor of any particular parish, have directed that notwithstanding the quotas should be fixed between the incorporated parishes, according to a certain average rate, for the purposes of the local act, yet that money might still be raised as before, by taxing parishes in aid of others, under the stat. 43 *Eliz.* for the purposes directed by that statute. And it is no answer to say, that the money, when raised under this order, will be applied to the same purposes as the fund raised under the local act; for if the objects of the latter be different from those of the stat. 43 *Eliz.* it will not follow that the money raised under the one will be applied to the purposes of the other: but the money raised under either will be applied to its own respective purposes. However, I do not see that the objects of the two acts are essentially different: the local act was in aid of the 43 *Eliz.*; they have both the same general object, to provide for the poor. But it is not necessary to go that length; because if the purposes to which the money is to be applied under the two acts be different, it will not follow that the money to be raised under this order will be applied to the purposes of the local act. — Order confirmed.

(a) There were stated to be two other parishes in the city not included.

CHAPTER VI.

MAINTENANCE OF RELATIONS.

- I. *The Statutes.*
- II. *The Jurisdiction of the Sessions.*
- III. *The Form of the Order of Maintenance.*
- IV. *What Relations are chargeable.*
- V. *Penalty of Disobedience.*
- VI. *Persons running away from their Families.*

I. *The Statutes.*

43 *Eliz. c. 2. § 7. 11. 11 & 12 W. 3. c. 4. § 7. 1 Anne, st. 1. c. 30.*

II. *The Jurisdiction of the Sessions.*

421. **REX v. Reeve**, *M. T. 7 Car. 1. 2 Bulst. 344.* — The defendant was brought to the bar upon a *habeas corpus*. It appeared by the return, that he had been committed by virtue of a warrant from a justice of the peace for the county of *M.*, because he being the *reputed grandfather* of one *B. G.*, a poor fatherless and motherless child, maintained at the charge of the parish of *St. G.*, and being also a man of ability, had refused to maintain or provide for the child, or to find sureties for his appearance at the next Quarter Sessions for the county of *M.* It was moved to discharge the defendant, because the defendant lived and inhabited in the town of *E.* in the county of *S.*, that he came to *London* not to reside, but to follow some suits which he had in the *Star-chamber*; and being there, he was apprehended by this warrant in the county of *M.*; that the Quarter Sessions of *M.* have not any power by 43 *Eliz. c. 2.* to make any order in this case, the party inhabiting the county of *S.*, and therefore all which has been done here is *coram non judice*. — THE COURT. It is very reasonable that he, being of sufficient ability, should contribute to support his grandchild; but he is not compellable to do it by the course which has been taken in the present case: the child resides here in the parish of *St. G.*, which is in the county of *M.*, and therefore the contribution must be here; but the party who is to pay this contribution resides in the county of *S.* The justices of the peace for the county of *S.* may make an order in this case, and thereby cause the money to be sent from thence to the parish of *St. G.*, but the Quarter Sessions of *M.* have no authority in this case. The Court, therefore, ordered the defendant to be bound over to appear at the next Quarter Sessions to be held for the county of *M.*, and upon his entering into recognizances for this purpose he was discharged.

The justices of the district in which the party on whom the order of maintenance is made dwells, alone have jurisdiction.

Sed vide post, contra.

422. **Rex v. Humphries**, *M. T. 24 Car. 2 Sty. Rep. 154.* — The Court was moved to quash an order of Sessions made at *D.* for parents to relieve their poor children. The exception taken was, That the 43 *Eliz. c. 2.* appoints that the justices in Sessions shall set the rate that is to be paid for their maintenance, which the jus-

The justices at Sessions must set the rate of maintenance, and cannot delegate their authority.

The justices cannot remove poor persons from their own parish to that where the relations live who are to maintain them.

tices here have not done, but have transferred their authority over to other justices to do it, which they cannot do; and so the order made by the justices is not good. — THE COURT said, This is all one as if an arbitrator should arbitrate another to make the arbitrament, which is not good; therefore let the order be quashed.

423. *Shermanbury v. Balney*, T. T. 5 W. & M. Com. 279. — A poor man who was legally settled in the parish of B., married a widow, who was, at that time, an inhabitant of the parish of S., and had three children living by her first husband, all of whom were under the age of seven years, and maintained by the parish of S., at the allowance of 3s. a week. After this marriage the mother and the three children were sent to the parish of B., where the husband was settled. The justices upon complaint of the officers of the parish of B., made an order that the parishioners of S. should continue to pay the 3s. a week towards the maintenance of the children; and, on appeal, this order was affirmed: But, being removed into the Court of King's Bench, it was moved to quash it, because the justices of B. had no power to make an order for such payment towards the maintenance of the children now they dwell in another parish. — THE COURT. The marriage of the mother into the parish of B. shall not settle her children there unless they were *nurse children*, for such must go with the mother; but it was doubted whether these children, being under seven years of age, shall be reputed to be nurse children. It was then objected, that it did not appear in this case but that the father-in-law was of sufficient ability. — To this it was answered by G. EYRE J. that where the relations are obliged to maintain their poor friends, such poor people shall not be removed out of their own parish, where they are settled, unto that parish where their relations live; for by that means, upon the death of such relations, the parish where they lived may become charged, which ought not to be; and therefore the poor person shall continue in his own parish, and his relations shall maintain him there. — ER PER CURIAM. This case is within the equity of the statute for the relief of the poor; and there is no reason that S. should be discharged of the children by their mother's marriage.

An order of maintenance must be made at a Quarter and not at a General Session. Vide Purnal's case, Salk. 476. where the same point is determined, and Rex v. Turner, 5 Mod. 329.

424. *Rex v. Charnock*, H. T. 9 W. 3. Comb. 418. — The defendant was indicted for not performing an order of Sessions requiring him to relieve and maintain his son's wife. The indictment being removed into the King's Bench was quashed, because it stated the order to have been made at a *General Session*, and not at a *Quarter Session*; for by the 43 Eliz. c. 2. § 7. the justices are only empowered to make an order in this case at their *General Quarter Sessions*; and they may hold other General Sessions than those four Quarter Sessions, which they are required to hold by the statute of 2 Hen. 5 st. 1. c. 4.

An order of maintenance cannot direct the pauper to be sent to the person on whom it is made.

425. *Rex v. Jones*, T. T. 9 Ann. Foley 53. — This was an order for the grandmother to take care of her grandchildren; and by the order the grandchildren were sent to the grandmother. — THE WHOLE COURT were unanimous, that they could not send the grandchildren to the grandmother; but that the justices ought to have made a rate upon the grandmother of so much a week. — The order was therefore quashed.

426. *Rex v. Kempson, M. T. 7 G. 2. MSS.*—At a General Quarter Sessions of the peace holden at S., upon the appeal of the churchwardens and overseers of G., in the county of S., an order was made against J. K., for the maintenance of his son's wife. This order was removed into the Court of King's Bench. —ABNEY contended, that the Sessions have, by the 43 *Eliz. c. 2.*, an original jurisdiction to make such order, it must have been made there, and cannot come to them by way of appeal, as in this case; and for this irregularity, the order is a mere nullity.—HARDWICKE C. J. It is not said to be an appeal from an order; it is a loose way of applying to the Court; but it will not vitiate the order.

The authority of the Sessions by the 43 *Eliz. c. 2.* in making orders of maintenance for poor relations is *original*; but they may make such order on the appeal of overseers, against the relation of the poor person. Salk. 474. 476.

III. The Form of the Order of Maintenance.

427. *Rex v. Jacob Mendes de Breta, M. T. 13 W. 3 Ld. Raym. 699.*—The defendant was a Jew, whose only daughter embraced Christianity; whereupon he turned her out of his house, and refused her the least maintenance. Upon which, on complaint to the justices at the General Quarter Sessions, they, reciting that she was the daughter of the defendant, and he was able to maintain her, made an order upon him (he being very rich) to allow her 20s. per month, under the penalty of 12l.; and this order they founded on the 43 *Eliz. c. 2. § 7.* And now it was quashed, because the justices have not jurisdiction to make such an order, it not being within the statute; because it was not alleged that she was poor, or likely to become chargeable to the parish. (a)

The pauper must be adjudged to be poor, or likely to become chargeable.

428. *Jenkin's case, E. T. 5 Ann. 2 Salk. 534.*—An order of Sessions was made, that the defendant should pay 2s. weekly towards the support of his father, till that Court should order to the contrary; which was held good, because it was indefinite and no set time limited: and if an estate should fall to the pauper, application might be made to the justices; otherwise if a time was limited.

To pay till the Court shall order the contrary is a good order.

429. *Rex v. Halifax, H. T. 12 Ann. Poor's Sett. pl. 52.*—An order of Sessions was made for the father-in-law to pay so much a week to his poor daughter-in-law. This order being removed into the Court of King's Bench, KING objected, that it is not stated in the order that the father-in-law was of sufficient ability.—PARKER J. This order must be quashed. Every body is supposed *prima facie* to be of ability to maintain himself and family, but no farther. Suppose this woman had had three husbands, who shall contribute then?—POWIS said, the last husband's father.

An order on a father-in-law to maintain his daughter-in-law must state that he is of sufficient ability. S.P. *Rex v. Dunn, post, pl. 446.*

430. *Rex v. Tripping, T. T. 4 G. 1. Viner, 424.*—Justices at the Quarter Sessions, upon complaint of the overseers that T. had left his wife, and that she was become poor and impotent, and chargeable to the parish, and that R. T. her father-in-law was of sufficient ability; upon its being proved that R. T. was of ability to relieve her, ordered him to pay, &c. a-week. This order was quashed for want of an adjudication that she was chargeable; and it was held, that an adjudication that the person is become chargeable is as necessary in an order of the Quarter Sessions as in an order of justices.

Persons to be relieved must be adjudged chargeable to the parish.

(a) Sed vide S. C. *post*, pl. 440. and the stat. 1 Ann. c. 30.

The order must state that the poor person was unable to work.

There must be an adjudication that the pauper is impotent.

An order of maintenance must be positive, not by way of recommendation; it must observe the words of the statute, and state how long the maintenance is to continue.

See *ante*,
pl. 428.

An order of maintenance must show that the person charged is within the jurisdiction of the Sessions.

See the case of
Rex v. Ruth,
Set. & Rem.

431. *Rex v. Gulley*, E. T. 1 G. 1. *Foley*, 47. — GLIDE moved to quash an order of Sessions. The order set out, that one M. G. was in a poor destitute condition, and that her father was able to maintain her, and therefore they made an order upon him to allow her 2s. 6d. a week till further order. — FIRST OBJECTION, The time was uncertain how long the father shall pay this. — *Sed non allocatur*. SECOND OBJECTION, It did not appear that she was lame, blind, or unable to work; so that though she was in a destitute condition, it might be because she would not work. — Upon this exception the Court quashed the order of Sessions.

432. *Rex v. Litton*, E. T. 5 G. 1. *Sett. Poor*, 111. — Upon complaint that A. was deserted and impotent, the justices adjudged and awarded the father to pay her so much a week. It was objected, that there was no adjudication that she was impotent, only in the complaining part of the order; and the order was quashed.

433. *Rex v. Pennoyer*, M. T. 13 G. 1. MSS. — Two orders of Sessions were made upon the defendant for maintaining and relieving his daughter-in-law. — VERNY took an exception to the framing of these orders. 1st, The statute directs under what circumstances alone a person can be entitled to this kind of relief, and expressly says, that the person must be "poor, old, blind, lame, or impotent; and that the person ordered to relieve be able, and living in the same county." These facts, therefore, ought to have been stated in the adjudging part of the order, and they appear to be set out by way of recital. 2dly, One of the orders is by way of recommendation to the defendant to relieve the pauper, and is indeed on that account no order at all. 3dly, The other order is also ill, because it appoints the defendant to pay 2s. 6d. a week, without saying for what time it shall continue; which is uncertain, and therefore void. — A rule was granted to show cause; and no cause being shown, both the orders were quashed.

434. *Rex v. Woodford*, E. T. 20 G. 2. MSS. — The order stated, That the pauper was not able to get her whole livelihood, and ordered her grandmother to pay, &c. Objection, That by this order the pauper does not appear an object of the Sessions' jurisdiction; for the act requires that she should be impotent, and accordingly enumerates several species of impotency; but the present pauper does not come within the description of any of them. A second objection was, That it does not appear that the grandmother lived in the same county. — THE COURT took no notice of the first objection, but said, the first order does not state that the persons on whom, &c. lived within their jurisdiction; and it is a general rule, that where an act of parliament gives a jurisdiction, the justices ought to show the persons to be within the jurisdiction which they have exercised over him: and though the second order (that is, of Sessions) recites that they were then living within their jurisdiction (being present in Court), yet that will not help the first, if it be insufficient: We cannot determine the points of law, unless the order comes properly before us; and it is impossible to confirm the first order by connecting it with the second, when that first appears bad in form.

IV. *What Relations are chargeable.*

435. *Draper v. Glenfield, M. T. 7 Car. 1. 2 Bulst. 345.* — The grandmother being a person of sufficient ability, had a poor grandchild relieved by the parish, and the grandmother married with the plaintiff *D.* The question was, Whether *D.* should be taken to be a grandfather within the meaning of the statute, and so liable to give maintenance to the child, he having married the grandmother, who was before a person of good ability? — It was resolved there by them, that he should not be accounted a grandfather within the statute, for that the wife, after her marriage, hath no ability at all, the husband having all given unto him by the law by his intermarriage with her; and the husband is not a grandfather, neither within the words nor yet within the meaning of the statute for the purpose of being charged in this case. — But CROKE J. said, it is either reasonable to charge him or not, upon this difference, where the grandmother with whom he intermarried was of good ability, and where not, at the time of the marriage; if she was then of ability, it is then good reason that the husband should be charged, but not otherwise.

If a grandmother, being of sufficient ability, is ordered to maintain a poor grandchild, and afterwards marries, her husband shall be liable to the maintenance.

436. *The City of Westminster v. Gerrard, M. V. 7 Car. 1. 2 Bulst. 346.* — On a complaint being made against one *E. G.*, who had married the grandmother, who ought to have contributed towards the maintenance of her grandchild, as a grandmother within the meaning of the 43 *Eliz. c. 2. § 7.*, the matter was referred to the decision of WHITELOCKE and CROKE Js. and they were of opinion, that if such a husband had an estate in marriage with the grandmother, he shall, in respect of this estate, be charged, and is bound to contribute towards the relief and maintenance of the grandchild; but not if he had not any estate nor advancement by his marriage with her. (a)

A husband who marries a woman liable to maintain a poor relation, and receives an estate with her in marriage, shall be liable in respect of the estate.

437. *Gerrard's case, H. T. 7 Car. 1. 2 Bulst. 347.* — This question was removed into the Court of King's Bench, where the facts of the case were agreed to be as follow: — *E. G.* had married one *A. S.*, the grandmother of *A. S.*, she being a poor widow, with whom he had no means nor any advancement at all: *G.*, the husband, had also but very small means: but they having been married for the space of 18 or 19 years, by the industry of the husband, and good housewifery of the wife, *G.* was now become a man of ability. The question, upon the statute of 43 *Eliz. c. 2.* was, Whether he being the grandfather-in-law, by having married the grandmother, who had no means at the time of the marriage, shall be by law bound to maintain the grandchild of his wife? — CROKE J. Clearly not. It is clear, that the grandmother or the grandfather, having means, shall be bound to keep the child; but if they have no means, then they shall not: also, if the grandmother hath no means, and she afterwards marries with one that hath means, he shall not here be charged with keeping of the child. But if the husband hath sufficient means with the grandmother in marriage, then he shall be charged with the keeping of

The husband of a grandmother, although he is of ability by the care and industry of his wife, is not bound to maintain her grandchild, unless she was a woman of sufficient ability at the time of the intermarriage; and shall even then only be charged during the life of his wife.

S. C. Foley, 43.

(a) *Holt, C. J.* in the case of *Rex v. Barney*, Comb. 405. said, that in *Gerrard's* case, who married the grandmother of a poor person, although she died, and so the relation was determined,

yet the statute was construed by equity that he was a grandfather within the statute. See also *Waltham v. Sparkes*, post, pl. 439.

the child during the life of the grandmother, his wife; for if the wife die, the husband shall not be charged after her death: also, if land descend and come to such a grandmother after her marriage, and the husband hath this in her right, the husband shall be bound to keep the child. In the present case, the grandmother, at the time of the marriage, had nothing, and, therefore, cannot be charged with keeping the child: also, if the husband after marriage come to be of ability, he shall not be charged. The reason why the husband shall be charged to keep the child when he marries the grandmother, being of ability, is, because by the marriage he hath acquired and got the means which the grandmother had, out of which means the child is to be maintained; and so *transit cum onere*, he must take his wife with this charge and burthen: but there is no reason in law to charge the husband in this principal case, because he had no means at all with her in marriage; and where the grandmother is unable and marries with a man of ability, he is not to be charged.—WHITLOCKE J. The justices of peace have done well in making this order against the grandfather, he being now become a man of ability, and that by the care and industry of his wife; he added also, that if he had been at Sessions with them, he would have made the same order.—CROKE J. was clearly against him in this.

A feme-covert cannot be ordered to keep her grandchild.

438. *Custodes v. Julies*, T. T. 3 Car. 2. *Styles*, 283. — BERNARD moved to discharge an order of Sessions made against a *feme covert* to keep a *grandchild* of hers, because a *feme covert* was not bound by such an order. — ROLLE C. J. answered, that her husband is bound to maintain his wife's grandchild, by the statute 43 Eliz. c. 2. § 7.; but the wife only who is *covert*, and not the husband, being charged by the order, therefore let the order be quashed. (a)

Bond to save the parish of A. harmless from B. his wife and children, one of which, born at the time the bond was entered into, marries, and is not able to maintain his children, the bond is forfeited. S. C. Comb. 321. Poor's Sett. 210.

439. *Waltham v. Sparkes*, M. T. 6 W. & M. *Skin*. 566. — Obligation, with condition to save the parish of S. harmless from G. his wife and children. *Joseph* the son of G. born at the time the obligation was entered into, had a wife and children, whom he could not maintain, and the parish, by a justice's order, was directed to allow two shillings *per week* to J. for the maintenance of him and his family. Action was brought upon this bond, and the condition was held to be broken; for though it does not extend to the grandchildren of G., become chargeable, yet their father J., who is by nature bound to maintain them, being unable to do so, he is in that respect impotent, and chargeable to the parish, and he is within the express words of the condition. And it was held, that all the children of G., though born after the obligation was entered into, would be within the meaning of the condition; the intent of which was, to secure the parish

(a) Sir W. Blackstone has adopted the law of these cases. "By the interpretation," says he, "which the Courts of Law have made on the statute of 43 Eliz. c. 2. and 5 G. 1. c. 8., if a mother or a grandmother marries again, and was before such second marriage of sufficient ability to keep

"the child, the husband shall be charged to maintain it; for this being a debt of her's when single, shall, like others, extend to charge the husband; but at her death, the relation being dissolved, the husband is under no farther obligation." 1 Black. Com. 448, 449.

from any expence or damage by means of the settlement of G. (a)

440. *Rex v. Jacob Mendes de Breta*, M. T. 13 W. 3. 3 Ld. Ray. 699. — The defendant being a Jew, had an only daughter, who was converted from Judaism and embraced Christianity; whereupon the defendant turned her out of his doors, and refused to allow her any maintenance. On complaint made to the Quarter Sessions, the justices, reciting that she was the daughter of the defendant, and that he was a man able to maintain her, made an order, founded on the 43 Eliz. c. 2. § 7. that the defendant (being very rich) should allow her 20s. a month for her maintenance, under the penalty of 20l.; but it not being therein alleged that she was poor, the order was quashed. In a commentary, however, upon this case it is said (b), that on her application for relief it was held, she was entitled to none. But this case is now provided for by the legislature. (c)

A Jew, who has turned his daughter out of doors for embracing Christianity, is not compellable by 43 Eliz. c. 2. to maintain her.

(b) 1 Blac. Com. 449.

441. *Budwath v. Dumphy*, H. T. 5 Ann. Salk. 123. — An order was made on the parish of B. for the maintenance of a bastard child born in the township of D. On being removed into the Court of King's Bench, it was held, that the clause in the statute 13 & 14 C. 2. c. 12. which provides, that distant townships of large parishes in the northern counties shall respectively provide for their poor under the penalty mentioned in 43 Eliz. c. 2. must be understood with respect to the maintenance of poor and impotent persons, and not with respect to bastards, who are provided for by other statutes. But if a bastard be grown up, and by accident grow impotent, he may be relieved as a poor person within that statute.

An order cannot be made for the maintenance of a bastard. S. C. Sett. & Rem. 157. See 2 Bulst. 346.

442. *Rex v. Davison*, H. T. 8 Ann. 11 Mod. 268. — Two justices made an order upon D., directing him to pay so much a week for the maintenance of his wife and family. On a motion to quash this order for want of jurisdiction of the justices in this case, it being alimony, and belonging to the Spiritual Court. — THE COURT said, that the justices have no jurisdiction in this case; but this is not alimony. If a man run away from his family, he may be punished as a rogue and a sturdy beggar; but while he continues resident he cannot be charged in this manner: and the order was quashed.

A husband cannot be ordered to maintain his wife. 2 Bulst. 344. Stiles, 154. Comb. 418.

443. *Rex v. Clentham*, T. T. 9 Ann. Foley, 39. — KING moved to quash an order which was made for one B. to provide for and maintain one A. W., because he was her father-in-law, the mother being dead. — PARKER C. J. I am afraid, if we extend this to a father-in-law that has a portion, it will also extend to one that has nothing with his wife. — THE WHOLE COURT were of opinion, that the husband ought to provide for the daughter-in-law during

A husband cannot be ordered to maintain his daughter-in-law after the death of his wife. Comb. 405.

(a) In this case it is said by Holt C. J. that the word *children* in the statute of 43 Eliz. c. 2. § 7. extends to *grandchildren*, because there is the same natural affection; but no case has occurred in which the same has been judicially determined: and, perhaps, says Dr. Burn, there may be some doubt as to this point; natural affection descends more strongly than it ascends; and it is observable, that whereas the

39 Eliz. c. 3. did only enact, that *parents and children* should mutually maintain each other, this statute 43 Eliz. enlarging this branch, extends it to *grandfathers and grandmothers*, but doth not specify *grandchildren*, &c. &c. &c.

(c) It appears by the Journals of the House of Commons of the 18th February and the 12th March 1701, that this case was the occasion of passing the statute of 1 Ann. st. 1. c. 30.

the wife's life in the right of his wife; but that when the wife dies, the relation is dissolved, and he is not by any means obliged to provide for the daughter-in-law after her death; this case, therefore, is not within the statute of 43 Eliz. c. 2. — Order quashed.

The husband shall maintain his wife's children during her life.

444. *Rex v. St. Botolph's, Aldgate*, E. T. 10 Ann. *Foley*, 42. — The single question was, Whether the husband of a *seme-covert* shall be chargeable by 43 Eliz: to maintain her children by her first husband? — And IT WAS RESOLVED, he was, during the wife's life, in her right; but not after; and therefore the order takes care to set out that the wife is alive.

If the father is living, and unable, the grandfather is chargeable.

445. *Rex v. Joyce*, M. T. 6 Ann. *Vin. tit. Poor*, 423. — An order, that the grandfather should keep the grandchild, the father being living but unable to do it; and also to pay so much more money for the time past, while he was chargeable, as well as for the time to come, was confirmed.

A man is not bound to maintain his son's widow. S. C. 10 Mod. 221.

446. *Rex v. Dunn*, H. T. 12 Ann. *MSS.* — An order of Sessions was made, that the defendant should maintain his son's widow, her husband, his son, being dead. The order being removed into the King's Bench, CHAPPLE took an exception that, by the death of the son, the relation which she bore to the father ceased: and although the order was quashed, because it was not set forth that the father was of sufficient ability, yet THE COURT seemed to allow this exception good.

A son-in-law is not obliged to maintain his mother-in-law. S. C. 303. *Foley*, 58.

447. *Rex v. Munden*, (a) T. T. 5 G. 1. *Str.* 190. — Order, reciting that M. had a good fortune with his wife, and that his *mother-in-law* was poor, therefore he is ordered to provide for her. — PRATT C. J. The cases which have hitherto been before the Court were either where the Judges were divided, or where the matter did not come directly in question, or was only a case at a judge's chamber. It never came judicially before the whole Court till now. And as it is *res integra*, on consideration we are all of opinion, that the *son-in-law* is not bound either within the words or intent of the statute, which provides only for *natural parents*. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature does not reach to this case. — Order quashed. (b)

(a) See *Stoneo. Carr*, post, pl. 454.

A person is not obliged to maintain his wife's mother, even in the lifetime of his wife. S. C. Set. & Rem. 91. See the case of *Billingsley v. Critchet*, 1 Brown's Cas. in Ch. 308.

448. *Rex v. Munday*, T. T. 5 G. 1. *Fort.* 303. — An order was made upon him and his wife to maintain his wife's mother. It appeared by the order that he had considerable effects with his wife, and that her mother fell into poverty after their marriage. — PER CURIAM: The order must be quashed, for the son-in-law is not within the act of parliament; and the wife cannot be of ability, because her estate is a gift to the husband, and he is a *purchaser* for a valuable consideration. And the Court observed, that it would be inconvenient if the wife should have children by a former husband.

A man is not bound to maintain his daugh-

449. *Rex v. Benoire*, M. T. 13 G. 1. *MSS.* — VERNEY obtained a rule to show cause why an order of Sessions made on the defend-

(b) This case was recognized as law by *Kenyon C. J.* in *Tubb v. Harrison*, post, pl. 452.

ant for the maintenance of his daughter-in-law, should not be quashed. The exception was, That a daughter-in-law, is not such a relation as is within the 43 *Eliz. c. 2. § 7.*, for there is no relation in blood between them, nor any obligation upon him by nature to relieve her; and he cited *Rex v. Munday*, where it was held, that a son-in-law was not bound to relieve his mother-in-law, which, he said, was stronger than the present case. — In the following Term the order was quashed, no cause being shown.

450. *Rex v. Kempson*, M. T. 7 G. 2. EDITOR'S MSS. — At the General Quarter Session of the peace upon the complaint of the parish of G. against J. K., the fact appeared to be as follows: In the month of July 1727, S. K. the younger was married to E. G., and in a few days afterwards went away from her, and never returned to or cohabited with her. In October 1729, a sentence of divorce *à mensd et thoro* was obtained, which sentence was produced and read in evidence at the Sessions. About six weeks since the said E. was delivered of a child, and no access to her husband was proved from the time of the divorce. She is now become poor and chargeable to the parish of G., who have appealed to this Court for an order on the said S. K. the elder, father of the said S. K. the younger, who is still living and able to provide for her, to contribute towards the maintenance of his son's wife E. K., under the statute 43 *Eliz. c. 2. § 7.*; he the said S. K. the elder appearing to be of good ability. It is therefore ORDERED by the Court, that the said S. K. the elder do and shall pay *li.* weekly and every week unto his said daughter-in-law, E. K., towards her relief and maintenance, and continue such payment till further orders. — LORD HARDWICKE C. J. I am of opinion, that a father cannot be ordered to maintain his son's wife, for the relation is not such as makes him liable to the charge: had the order been made upon the husband to relieve his wife, it would have been binding on him, but cannot affect the husband's father. In *Dunne's case* (a), an order was made on a father to maintain a son's widow, and an exception was taken to it by my brother CHAPPLE, that by the death of the son the relation she bore to the father ceased; but this order was quashed, because it did not appear that the father was of sufficient ability. In *Rex v. Munday* (b), however, the Court were clearly of opinion, that a son is not liable to maintain his wife's mother; though in that case it was argued in favour of the order, that by the law of nature a father ought to maintain his son's wife; but there being no law in force to second the law of nature, the 43 *Eliz.* was made to carry it into execution; yet the Court then over-ruled it, and I am very well satisfied with the authority of that case. For this exception, therefore, I think this order must be quashed, and that the statute only extends to natural relations. — PAGE and PROBYN Js. agreed. — LEX J. No direct opinion is given in the case in *Keble*; and in *Munday's case* it appeared upon the special state of the order, that he had a good fortune with his wife, and therefore it was insisted that it was in nature of a debt due to the wife's mother; but the Court clearly held, notwithstanding this fortune which the son had with his wife, that the statute only extended to natural relations. — The rule, therefore, for quashing the order was made absolute.

ter-in-law.
S. C. 2 Ld.
Ray. 1454.
2 Sess. Cas. 56.

The statute of
43 *Eliz. c. 2. § 7.*
only extends to
natural relations,
and not to relations
in law; and therefore
a father is not bound
to maintain the son's
wife.
S. C. Sess.
Cas. 230.
Barnard. 329.
364. 2 Str. 956.

(a) *Ante*, pl. 446.

(b) *Ante*, pl. 448.

The father-in-law of a pauper is not obliged to maintain him. See the case of *Billingsley v. Crichton*, in 1783, *Brown's Cases in Chancery*, 268.

(a) *Ante*, pl. 448.

A husband is not bound to maintain his wife's child by a former husband.

(b) See *Stone v. Carr*, *post*, pl. 454.

One who marries a widow, having children by her former husband, is not bound to maintain such chil-

451. *Case of Woodford and Lilburn*, 20 G. 2. MSS. — J. L. the father-in-law of the pauper was charged with her maintenance; and the justices gave this reason, because he had a great fortune with his wife, the pauper's mother. — THE COURT: It was determined upon this act in *Rex v. Munday* (a), that the words "father" and "mother" mean such as are so in blood, and that even these relations are not chargeable in all instances, but that they must be such as are of sufficient ability. But this is a case where the mother is not of sufficient ability, being married at the time of the demand; and this demand is not a charge upon the estate, but upon the person in respect of the estate; and if they are not of ability at the time when the demand arises, they are not chargeable by this act. The present case is exactly the same with that of *Rex v. Munday*; so that we are of opinion, that the father-in-law is not liable in respect of any estate which he had with his wife.

452. *Tubb v. Harrison* (b), M. T. 31 G. 3. 4 T. R. 118. — This was an action of covenant; in which the defendants, who were father and son, after reciting that differences had arisen between the son and his wife, and that they had agreed to live separate, covenanted to the plaintiffs to pay the wife an annuity of 50*l.* a year, and to pay all the debts contracted by her which her husband was by law liable to pay. The breaches assigned were, amongst others, that the wife had then contracted a debt of 56*l.* 16*s.* 9*d.* to J. B., for necessary board and lodging, and other necessities, and for money paid and laid out for necessities for Mrs. H. and her infant son by a former husband, at her request. On the trial of this cause before KENYON, it was agreed that the plaintiffs should take a verdict for 150*l.*; and that it should be referred to an arbitrator to take an account of the particulars of the several demands, so that the same might be stated to the Court, subject to their opinion and direction on the construction of the covenant in the deed of separation whereon the action was brought. The account being now delivered in, it appeared that several of the items were for the maintenance of her infant son by a former husband. — KENYON C. J. said, that he had seen a copy of the order in *Rex v. Munday*, taken from the records of the Court, by which it clearly appeared, that the wife was alive (c) when the order was made. The Court in that case reversed the order of maintenance, on the ground that the statute of 43 Eliz. c. 2. § 7. only extends to natural relations. Therefore, on the authority of that case (d), we are of opinion, that the husband is not liable for the expences of maintaining the wife's child by the former husband; and, consequently, that those articles in the account must be disallowed.

453. *Cooper v. Martin*, T. T. 43 G. 3. 4 East, 76. — Assumpsit for meat, drink, washing, lodging, and other necessities provided by the plaintiff for the defendant for seven years before, for which the defendant afterwards promised to pay him so much. At the trial before GROSS J., the case appeared to be as follows: The defendant was the son of the plaintiff's wife by a former husband,

(c) And so it appears by the report of *v. Benoite*, *ante*, pl. 449. was also the same case in Fort. 303. *Ante*, pl. 448.

(d) The order of maintenance in *Rex Munday*, *ante*, pl. 448.

and he and three other children of the former marriage were maintained by the plaintiff for several years during their minority; and after the defendant came of age, and a demand was made upon him by the plaintiff for the expences of his maintenance, the defendant promised to pay it. The situation of the family was this: the defendant's father died insolvent, and the plaintiff did not appear to have any substance of his own, having been obliged to sell a small estate, which he had at the time of his marriage, to satisfy certain creditors to whom his wife had bound herself for her former husband's debts. But she had a freehold estate of about 100*l.* *per annum* clear value, with a house upon it, in which she and her children were living when she married the plaintiff, and in which they all continued to reside for some years, till the defendant left them, when about the age of 19. This estate of her's, and the fortune of the defendant and the rest of her children, came to them by the will of her uncle. It appeared that the plaintiff had brought up the children, and given them boarding in a manner suitable to their expectations, but beyond what could have been expected of him, upon a supposition that no provision was made for them out of which he might thereafter be reimbursed when they came of age. A sister of the defendant, who still lived in the plaintiff's family, proved that in a conversation with the defendant, in which she had mentioned her own intention of paying for her board, the defendant said that he should have paid the plaintiff but for his eldest brother, who had advised him not to do so. The plaintiff's claim was at the rate of 2*l.* a year, board, washing, and lodging, for five years and upwards. The learned judge left it to the jury, Whether the plaintiff had supplied the defendant with more than his state and condition required? that if he had not, or to the extent at least that was necessary and proper, it was a meritorious consideration to support the promise made by the defendant after he came of age. The jury were of opinion that the expence incurred by the plaintiff in the maintenance of the defendant amounted to 20*l.* a year, but that according to the defendant's state and condition there ought not to have been more than 10*l.* a year expended upon him; and therefore they found a verdict for the plaintiff for 50*l.* for five years. And the defendant had leave to move to enter a nonsuit if the Court thought that the action was not maintainable, or why a new trial should not be had. — LORD ELLENBOROUGH C. J. However that case might be afterwards as between the father-in-law and the child, yet, as to third persons, the former was bound by the acts of his wife in providing for the children whom he held out to the world as part of his family. So here, the plaintiff would have been liable to the tradesmen who supplied the children with necessaries by his wife's orders, while they were living with him as part of his family. But as to the general obligation of parents and children to provide for each other, in *Tubb v. Harrison* (a), which is the latest decision upon the subject, and in which the other authorities were considered, it was holden to extend only to natural relations. Then the plaintiff, not standing in that relation to his wife's children by her former husband, was not bound by the act of marriage with their mother to maintain them, but stood in that respect in the situation of any other stranger. And having done an act beneficial for the defendant in his infancy,

dren, though they were maintained by the widow before her second marriage, when her second husband acquired her former means. Therefore, if the second husband maintain such children, it is a good consideration for a promise by them when they come of age to repay the expence of their maintenance respectively: especially where the second husband was a man of small substance, and the children had a competent provision to receive when they came of age, which was to accumulate for them in the mean time, and he made no application to Chancery for an allowance out of the fund, as he might have done.

(a) *Ante*, 452.

(a) 1 Str. 690.
and vide S. P.
1 Ld. Ray. 389.

it is a good consideration for the defendant's promise after he came of age. In such a case the law will imply a request; and the fact of the promise has been found by the jury. The cases both at law and in equity have certainly gone on considering a child so circumstanced as being entitled to maintenance out of the fund, and the plaintiff might have applied to Chancery for an allowance in this case: but though he did not make such application, but expended his own funds for the benefit of the defendant, it is a good consideration at least for the subsequent promise to repay him. — GROSSE J. In *Southerton v. Whitlock* (a), it was holden that if goods be provided for an infant, though not necessities, yet if, after he come of age, he promise to pay for them, he is bound. Then, if bound to a stranger in such a case, there is no reason why he should not be bound to a father who has provided for him as the plaintiff has done. There is good reason, upon general principle, why such a promise should be binding; for it operates as an encouragement to a father, who, having himself only a small income, has a son with a good estate, which he is not to enjoy till he comes of age, to incur perhaps his own fortune in giving his son an education proportionable to his future prospects, but beyond his own means, upon the expectation that his son will take the circumstance into his consideration after he comes of age. Then it is that he is to judge whether or not he will make the promise, and to what extent. But if he do, it is for the public benefit that he should be bound by it. — LAWRENCE J. The early cases referred to proceeded upon a mistake, in considering the maintenance of the children as a *debt* of the mother, who has married a second husband, or as a *debt* on her estate. The wants of the children are only a ground for an order of maintenance on the parent, if of sufficient ability. But when she has parted with that ability by her second marriage she is no longer liable. The husband only takes her *debts*; but this is no *debt* of hers. Ceasing to be of ability, the maintenance of the children could not have been enforced by an order against her, and therefore could not have been enforced at all. Then the plaintiff, having conferred the benefit without any obligation, it is a good consideration for the promise by the defendant after he came of age. — LE BLANC J. The only method of compelling maintenance is by the order prescribed by the statute of *Eliz.*; and in the latter cases it has been settled that that statute only extends to natural relations. It was so ruled in *Rex v. Munday* (b), and more recently confirmed in *Tull v. Harrison*. (c) Then the question is, Whether the plaintiff having afforded maintenance to the defendant without any obligation, it is not a good consideration for a promise after the defendant came of age? What was the situation of these parties? The father, a man with a small income; the defendant, entitled to a good provision if he lived to the age of 21, which was to accumulate for him in the mean time. The father might have applied to Chancery to have part of the accumulation for the maintenance and education of the son, which would have been granted to him; but not having done so, the accumulation has gone to increase the son's estate. Therefore, here is a clear good ground for the promise. And the jury having only given half the maintenance, I doubt whether we should do a benefit to the defendant by sending this to a new trial. — Rule discharged.

(b) *Ante*, pl. 448.

(c) *Ante*, pl. 452.

454. *Stone v. Carr, E. T. 39 G. 3. Esp. N. P. 1.*—This was an action of *assumpsit*, brought by the plaintiff, who was a school-master, for the education and maintenance of an infant child. The child was the son of the defendant's wife, by a former husband. On the defendant's marriage with the child's mother, he had taken possession of a house, which she occupied with her children, and which house had belonged to the first husband: the business she had carried on was continued, and the children were suffered to live with him as part of the family, and provided for by him while he was at home. For the defendant it was given in evidence, that he was gunner of an India ship; that during his absence on a voyage, the boy had been put out to school by his mother to the plaintiff. His counsel then contended, that as he had never made any contract or agreement with the plaintiff, he could not be charged, by reason of any implied liability; and cited the case of *Tubb v. Harrison (a)*; wherein it is expressly decided, that a husband is not liable for the education or maintenance of a child his wife may have had by a former husband. — LORD KENYON, after referring to the case cited, said; the present was distinguishable from that: there was no doubt, if a man married a woman having children by a former husband, he might refuse to provide for them; and under the authority of *Rex v. Munday (b)*, cited in that case of *Tubb v. Harrison*, he could not be compelled to do it; but if a man did not so refuse to entertain them, and took the children into his family, he then stood *loco parentis* as to them. Such was the case here: he had so adopted them, and having gone abroad, and left them in the care of his wife, he should hold him to be bound by her contracts made for their maintenance and education. If she had any property by her first husband, the case was stronger; for then part of the property, of which the defendant possessed himself, belonged to the children: but even had their father died insolvent, it would not alter his opinion. The defendant, on his marriage, had no right to take possession of the house and business: he had thereby confounded all the boundaries of the property, and placed himself in a state of responsibility. He therefore directed the jury to find a verdict for the plaintiff: which they did.

Though a husband is not bound to provide for the children of his wife by a former husband, yet if he takes them into his house, and they become part of his family, he shall be deemed to stand *loco parentis*, and be liable in a contract made by his wife for their education. (a) *Ante*, pl. 452.

(b) *Ante*, pl. 447, 448.

V. Penalty of Disobedience.

455. *Rex v. Robinson, T. T. 32 G. 2. Burr. 709.*—The defendant was indicted for disobeying an order of Sessions, directing him weekly to pay to the overseer of *W. 2s.* for the relief and maintenance of his grandchild. The objection to the indictment was, That the offence is not indictable, because the 43 *Eliz. c. 2.* has pointed out a *particular punishment*, and a *specific method of recovering the penalty* which it inflicts. — But THE COURT, on a motion to arrest the judgment on the verdict which had been given against the defendant, was, after consideration, unanimously of opinion, that it was an indictable offence.

Disobedience to an order of maintenance is indictable. See 43 *Eliz. c. 2. § 7.*

(b) *Rex v. Munday—Ante*, pl. 448. This was an order on the defendant to provide for his wife's mother; and by the opinion of the Court of King's Bench, the order was quashed. The

statute which enabled an order of maintenance to be made to provide for relations, extending to *natural relations only*.

VI. Maintenance of deserted Families.

See stats. 7 Jac. 1. c. 4. § 8. 5 G. 1. c. 8. 17 G. 2. c. 5. § 1, 2. 4. 9. 26. 32 G. 3. c. 45. § 8. 1 & 2 G. 4. c. 64. 5 G. 4. c. 83.

A common soldier, billeted in a distant parish from that in which his family resides, is not a vagrant as running away from his family, although he is able and refuse to maintain them, and they become chargeable to the parish. See *quære*. See 32 G. 3. c. 45. § 8.

An order of two justices, founded on the statute 5 G. 1. c. 8. (for providing for the families of absconding men out of their estates) should state how much of the goods or rents of the fugitive should be seized by the parish officers; and the subsequent order of confirmation by the Sessions should specify the quantum of relief to be appropriated out of the goods and rents so seized, and limit a period for such appropriation; supposing such prospective order to be good, and that the order is not to be confined to the discharge of expences already incurred

456. *The Soldier's case*, T. T. 25 & 26 G. 2. 1 Wils. 331. — The defendant was brought up by a *habeas corpus*, whereupon it was returned that he was committed by a justice of the peace as a *vagrant*, being charged by the overseers of the parish of St. A., as a *rogue and vagabond*, in running away from his wife and child, whereby they are become chargeable to the parish. There was also an affidavit, wherein it was sworn on behalf of the parish, "that he was a watch-movement maker, and could earn 11. 10s. a week, and that he refused to maintain his wife and child." — The ATTORNEY-GENERAL moved, that he might be discharged, upon an affidavit that he was a *soldier*, that he did not run away, but was billeted at W. when he was taken up; and he contended, that *common soldiers* of the army, maintained and kept for the support of our liberties and properties, cannot be *rogues and vagabonds*, or *idle and disorderly persons*, within the meaning of the 17 G. 2. c. 5. — THE COURT: He cannot be a *vagrant* within this act of parliament, and so must be discharged.

457. *Stable v. Dixon*, H. T. 45 G. 3. 6 East, 163. — The plaintiff declared in covenant for a year's rent in arrear, upon an indenture of demise, for a messuage and farm, at the annual rent of 18l. 10s. The defendant, after craving oyer of the indenture, pleaded, 1st, as to 2l. 14s. of the rent, a tender. 2dly, As to 15l. 16s., the residue, payment thereof to the plaintiff's use. 3dly, A set-off for 20l. paid by the defendant to the use of the plaintiff, at his request, and for so much more had and received by the plaintiff for the defendant's use, and for the like sum for meat, drink, &c. and other necessities provided by the defendant for the plaintiff's wife and other persons at his request, and also upon an account stated. 4thly, The defendant pleaded as to 7l. 16s. parcel of the said sum of 15l. 16s. and of the rent declared for, that before the 25th of March 1803, (when the rent became due) the plaintiff had gone away from his place of abode at C., in the county of C., into some other county or place, and had left D. S. his wife in the said parish, chargeable thereto, the place of their then legal settlement, and that the plaintiff continued so away from his said place of abode till after the 25th of March, viz. from 24th of June 1801 hitherto; during which time his said wife continued so chargeable to the parish; and it thereupon became necessary that she should be maintained at the expense of the said parish: whereupon the then overseers of the said parish afterwards, in pursuance of the statute in that case made, applied to J. K. and J. B., two justices of the peace for the said county of C., where the plaintiff's wife was so left as aforesaid: and thereupon the said justices, in pursuance of the statute, made their warrant or order in writing, under their seals, directed to the churchwardens and overseers of the poor of the said parish of C.; whereby, after reciting (in substance) that it appeared to them the said justices, as well on the complaint, &c. as on due proof on oath that the plaintiff had gone away from his place of abode at C., &c. into some other county or place, and had left D. S. his

wife chargeable to the said parish, the place of their last legal settlement, and that the plaintiff had some estate whereby to ease the said parish of the said charge in whole or in part, they the said justices thereby authorised and commanded them the churchwardens and overseers, &c. of C. to receive the annual rents and profits of the lands and tenements of the plaintiff at B. in the parishes of B. and W. in the said county of C. (the same being the said lands and tenements demised to the defendant) for and towards the discharge of the said parish of C., for the providing for the plaintiff's wife: and that with the said warrant they the said churchwardens and overseers should appear at the next Quarter Sessions for the county, and certify then and there what they should have done in execution of the said warrant. The plea then stated, that at such next Quarter Sessions, holden on the 13th of July 1801, the said order was, in pursuance of the statute, confirmed by the Court; and the Court did then and there order the said churchwardens and overseers, &c. to receive 7l. 16s. rent of the rents and profits of the lands and tenements of the plaintiff at B. in the parishes of B. and W. &c., being the premises so demised to the defendant, for and towards the discharge of the said parish of C., for the providing for the said D. S. the plaintiff's wife. And then the plea alleged payment of the said 7l. 16s. parcel of the rent, by the defendant, by virtue of such order. The replication, after accepting the tender of the 2l. 14s. paid into Court, and traversing the payment of the 15l. 16s. residue, as stated in the second plea, and the sums alleged to be due by way of set-off in the third plea; pleaded as to the said sum of 7l. 16s. in the fourth plea mentioned; that before the said 25th of March 1803, viz. on 1st of October 1801, the said 7l. 16s. in the said order of Sessions mentioned, was paid by the defendant to the then churchwardens and overseers, &c. of C., pursuant to the said order of Sessions; and that afterwards, on the 25th of March 1802, the said 7l. 16s. was deducted by the defendant, and allowed to him by the plaintiff out of the rent, &c., which on the day and year last aforesaid became due from the defendant to the plaintiff, and thereby and thereout was paid and satisfied to the defendant. Rejoinder to the last replication; that the said sum of 7l. 16s. mentioned in the fourth plea to have been so paid by the defendant was another and different sum of 7l. 16s. than the 7l. 16s. so deducted and allowed as aforesaid, namely, for the second year's payment under the said order in the said plea mentioned; which said last-mentioned sum has not been deducted, or allowed, or paid by the plaintiff. To this there was a general demurrer, and joinder. — ELLENBOROUGH C. J. The stat. 5 G. 1. was made to prevent a great public inconvenience, arising from persons going out of their parishes and leaving their families a burthen to the parishioners; although they had substance of their own out of which they might be maintained: and it gave to two magistrates a power of appropriating to this purpose so much of the goods and chattels and so much of the annual rents and profits of the party as they should order and direct, or as the Sessions afterwards, to whose confirmation such order is to be submitted, should think fit. But it never was meant to invest the parish officers or the magistrates with a right to take indefinitely all the property of such a person, without apportioning how much of it was to be taken for that purpose. The lan-

by the parish. And *quære*, if the original order be defective in the particular mentioned, whether the Sessions can make it good by an order of confirmation, directing the parish officers "to receive 7l. 16s. rent of the rents and profits, &c. towards the discharge of the parish for providing for the party's wife," &c. But, at any rate, a payment of one sum of 7l. 16s. is a sufficient compliance with such order, on the only ground of construction on which it can be supported. And the tenant in whose hands the rent was seized cannot justify, in covenant by his landlord for rent in arrear, the retaining a second sum of 7l. 16s. out of the second year's rent, upon the supposition that such order of Sessions extended to enable the parish officers to receive so much annually out of the rents; for in that view the order would be bad in law upon the face of it, as an indefinite order for the annual payment of such a sum, without

any limitation of time, or until further order, &c.

guage of the act is, that the goods and chattels, and rents and profits are to be taken for or towards *the discharge* of the parish; which imports that it was to relieve the parish from a burthen already incurred, and which was therefore capable of being then ascertained. But even if their power extend to the making a prospective order for future maintenance likely to be incurred, at all events the justices are to ascertain *how much* is to be taken; for the act expressly says, that the parish officers shall take *so much*, &c. as the justices shall order. That makes it imperative on the magistrates to ascertain the sum. But if an order like this could be sustained it would open a door to great vexation. If any person happened to go away, leaving his family a charge on the parish, it would authorise the justices to make the parish officers trustees for the whole of his property to whatever amount. The original warrant then being made in the exercise of an indefinite, instead of a limited authority, and being void in that respect; the next question is, Whether it were capable of receiving confirmation at the Sessions? And assuming that it could, as capable of limitation in respect of the sum to be taken by the parish officers; (for they seem there to have abandoned the ground of an indefinite seizure,) then can the order of Sessions be sustained beyond the terms of it, as an order to receive the sum of 7*l.* 16*s.*? Admitting that it might be good to that extent, as an order to receive a definite sum, (subject, however, to the objection to it as a confirmation of an original indefinite order of seizure), the answer is, that the sum is already paid and allowed. But taking it, as is now contended for, as an order to receive that sum annually out of the rents and profits, without any limitation of time, the objection applies that for want of such limitation, "as till some other order made," it is void by the authority of the case mentioned. Therefore, unless the order of Sessions be understood as limited to raise 7*l.* 16*s.* once for all, that would also be invincibly bad; and if so understood, the order has been satisfied. — GROSS J. The question is, Whether the order of Sessions for the payment of the sum specified has not been obeyed? The plaintiff alleges that he has paid the 7*l.* 16*s.* once; which the defendant does not deny, but now insists that the order of Sessions authorises the annual payment of that sum for ever. If it do, such an order cannot be sustained for a moment; for the statute only authorises the churchwardens and overseers to take *so much* as the justices shall direct, that is, so much as the parish shall have sustained. The Sessions, however, have specified a particular sum to be paid. It is plain, therefore, that they thought the sum necessary to be specified; though it is now pleaded as a continuing order which is to last indefinitely. Taking it to be so, the first order is bad, because no sum is therein specified; and the second order is bad, because made for an unlimited time. The intention of the legislature in making this provision was only to indemnify the parish; and it meant either that the money ordered to be taken should have been expended by the parish, or that the justices should judge what was proper to be expended upon the family of the absconding man. But as the matter stands I cannot say that the justification pleaded is good in law. — LAWRENCE J. The first order of the justices ought to have specified the sum to be raised, because the declared intention of the act is that *so much* should be taken as the

justices should think fit, meaning that they should exercise their discretion upon the amount to be taken. That order should have specified how much property was to be seized, and then the order of Sessions should have stated how much of that should be sold or appropriated. I cannot consider the order of Sessions as directing that more than one sum of 7*l.* 16*s.* should be taken. If more had been intended they should have said so, more distinctly, as by adding the word *annually*, or *till further order*. The defendant, therefore, has no reason to complain of having been misled by the order. Besides, if the order were illegal, he should have refused payment; and if indicted for disobedience he might have defended himself; or he might have brought an action of trespass if his goods had been distrained; for he would not have been concluded by an order to which he was no party from showing that it was illegal. But I think the order of Sessions only meant that one sum of 7*l.* 16*s.* should be taken. — Judgment for the plaintiff.

CHAPTER VII.

OF THE RELIEF AND ORDERING OF THE POOR.

- I. *The Statutes.*
- II. *For what and by whom an Order may be made.*
- III. *Reimbursing Constables, &c.*
- IV. *Relieving Families of Militia-men.*
- V. *Erecting Workhouses.*

I. *The Statutes.*

43 *Eliz.* c. 2. § 1, 2, 4, 5. 3 *Car.* 1. c. 4. § 22. 19 *Car.* 2. c. 4. § 1, 2, 3. 3 *W & M.* c. 11. § 11. 8 & 9 *W.* 3. c. 30. § 2. 9 *G.* 1. c. 7. § 1, 2, 4. 16 *G.* 2. c. 18. 17 *G.* 2. c. 38. 9 *G.* 3. c. 37. § 7. 30 *G.* 3. c. 49. § 1, 2, 3. 36 *G.* 3. c. 23. § 1 to 5. 45 *G.* 3. c. 54. 48 *G.* 3. c. 6. 49 *G.* 3. c. 124. § 5. 50 *G.* 3. c. 50. 50 *G.* 3. c. 52. 51 *G.* 3. c. 79. 52 *G.* 3. c. 160. 53 *G.* 3. c. 21. 53 *G.* 3. c. 113. 54 *G.* 3. c. 170. 55 *G.* 3. c. 137. 55 *G.* 3. c. 146. 56 *G.* 3. c. 129. 59 *G.* 3. c. 12. 59 *G.* 3. c. 95. 59 *G.* 3. c. 127. 1 & 2 *G.* 4. c. 56. 5 *G.* 4. c. 71.

II. *For what and by whom an Order may be made.*

Several orders made on statutes passed for different purposes are bad.

458. *EATON Bridge v. Westerham, H. T. 11 W. 3. Salk. 487.* — An order was made at the Quarter Sessions for the relief of poor prisoners in gaols, and for providing materials to set them at work, on the 14 *Eliz.* c. 5. and 19 *Car.* 2. c. 4, whereby a sum was assessed on the several parishes, not exceeding what is allowed by both acts; but it was quashed, because they ought to have made distinct orders upon the different statutes, the money to be levied by virtue of each statute being applicable to different purposes.

Relief cannot be given to a pauper residing in a foreign parish.

459. *Clypton St. Mary v. Ravistock, E. T. 11 Ann. Poor's Sett. 49.* — An order was made, reciting, Whereas *J. S.* and his wife are last settled in *C.*: THESE are to order you the churchwardens of *C.* to repair to the parish of *R.*, and to relieve them, being so sick that they cannot be removed. — THE COURT: The justices have no authority to send for officers out of another parish, but are bound to maintain the poor as long as they continue with them. — And by *POWELL J.*, parishioners are not to be relieved till they are carried to the parish. — The order was quashed.

An order for relief must state the party to be poor and impotent.
(a) *Ante*, pl. 431.

460. *Rex v. Hayworth, M. T. 3 G. 1. Str. 10.* — Order to pay 3s. weekly to *A.* by the parish of *H.* so long as he should continue poor. — *MARTIN* moved that by the statute of 43 *Eliz.* c. 2. it ought to appear in the order, that the person relieved is poor and impotent; and he cited *Rex v. Gully (a)*, where an order for a father to pay so much to his daughter was quashed, because it only stated that she was in a destitute condition and wanted relief. — *PARKER C. J.*

I favour these orders as much as I can, because no body takes care to draw them up for the poor. But it must be quashed. (a)

461. *Rex v. Smith*, H. T. 10 G. 1. MSS. — The defendant was indicted as overseer of the poor, for not paying a sum of money to a surgeon who had taken care of a pauper, pursuant to an order of a justice of the peace. — FAZAKERLY moved to quash the indictment, the order being made in a matter on which the justice had no jurisdiction; for this kind of assistance does not come within the notion of relief to the poor: and the indictment was quashed.

An indictment does not lie for disobeying an order to pay money to a surgeon, &c.

462. *Rex v. Overseers of Chichester*, M. T. 11 G. 1. MSS. — An order was made at the Quarter Sessions, that the present overseers should pay 3*l.* to the preceding overseers, being money expended by them in *law charges*. This order being removed into the Court of King's Bench, BAINES moved to quash it, because the authority of the justices upon this subject is confined to orders for the relief of the poor only—And for this reason the order was quashed.

The order cannot be made for any other purpose than the relief of the poor.

Salk. 531. S. P. determining Mich. 2 G. 2.

463. *Rex v. Woodsterton*, M. T. 6 G. 2. 2 Bar. K. B. 207. 247. — To an order of two justices upon the overseers to pay a nurse and a surgeon who had attended a pauper while he was ill in gaol, it was objected that it did not conclude to have been made under the hand and seal of the justices; but it was said that this omission was remedied by the recital at the beginning of it: "We, two of his Majesty's justices of the peace, whose hands and seals are hereunto set, &c." — And THE COURT were of opinion that this was sufficient.

If an order of relief state in the recital that the hands and seals of the justices are thereunto set, it is sufficient.

464. *Rex v. Woodsterton*, M. T. 6 G. 2. 2 Bar. K. B. 207. 247. — To an order by two justices directing the overseers to pay for attendance given to a pauper during his illness in gaol it was objected, that the statute of 2 & 4 W. 3. c. 11. § 11. does not give authority to any neighbouring justice to make an order of relief, except where there is no justice residing in the parish, for the words are, "*if no justice be dwelling in the parish*," which is a declaration, that if a justice be dwelling there, he only shall have cognizance of the matter, and that, therefore, it ought to have been averred in the order that the justices who made it lived in the parish, or that there was no justice living there; and that one or the other of these averments was absolutely necessary to the validity of the order. But it was answered, that the Court would intend that the justices who made the order were dwelling in the parish, and for this purpose the case of *St. John v. St. John* (b) was cited; and that the statute upon this part was only directory, and for which Salk. 473. was relied on. — And THE COURT said, the objection had been sufficiently answered.

An order of relief is good, though it do not state that the justice resided in the parish.

(b) Hob. 78.

465. *Rex v. Woodsterton*, M. T. 6 G. 2. 2 Bar. K. B. 207. 247. — Two justices made an order upon N. B., overseer of the parish of W., for paying 5*l.* to the wife of R. R., for her attendance in nursing one J. C., a poor inhabitant of that town, when he was ill in gaol; and likewise for paying a surgeon's bill to one S. W., that was due to him on account of the said pauper; which order

The justices cannot order the overseers to pay nursing and surgery on account of a pauper who is ill in gaol.

(a) On the authority of this case an order was quashed in *Rex v. Stoke Ursey*, E. T. 3 G. 1. for the same fault; and another, *Rex v. Tipper*, E. T. 4 G. 1. on an order to maintain a daughter-in-law. See also 1 Keb. 489, 2 Keb. 643. 744.

S. C. 1 Sess.
Cas. 199.

had been confirmed at the Sessions. It was objected, that the meaning of the statute of 3 & 4 W. 3. c. 11. was nothing more than that the justices of the peace should have a power to order parish officers to relieve a poor inhabitant, where it was fit he ought to be relieved; but that in the present case the parish officers had actually given the party relief; they employed a surgeon and a nurse to take care of him. The *surgeon* and *nurse* have a proper remedy by way of action against the officers; and the justices have no pretence to interfere in this matter. — THE COURT, as to the exception in point of *substance*, thought it must be fatal. (a)

An order of maintenance, whether made by the Sessions or by one justice, must state that it was made upon oath that the pauper, or some person on his or her behalf, had applied to the overseers at some parish-meeting for relief; that relief had been refused; and that the overseers had been summoned to show cause why it should not be granted.

S. C. Cald. 72.

466. *Rex v. Winship*, M. T. 11 G. 3. — The defendants were overseers of the township of C. Among the poor upon the books of that township was one M. R., a widow of 92 years of age, labouring under great bodily infirmity, who had been for some time allowed 2s. a week by the township. Upon the establishment of a poor-house in the township, the Quarter Sessions ordered that several poor persons, who were receiving relief from the township, should, on a month's notice, go into the poor-house, M. R. refused to go into the poor-house, and the overseers refused to pay her the said weekly allowance until there was an arrear thereof of 6l. 14s. due to her. She applied to the Quarter Sessions; and the Sessions made an order on the overseers to pay her the said arrears, and to continue to pay her the 2s. a week; but it did not appear that she had made *oath* before the Sessions, pursuant to the statute 9 G. 1. c. 7. § 1. that she had been refused relief by the overseers. The overseers refused to obey the order of Sessions, insisting that M. R. should go into the poor-house, according to the order of Sessions, &c. The overseers were indicted for disobeying this order, and a verdict was given against them, subject to the opinion of the Court of King's Bench, whether they ought to have been convicted or not. The principal question meant to be submitted to the Court was, Whether there is any legal authority vested in the magistracy of this country to make an order for the relief of poor persons refusing to go into the poor-house? and it seemed to be admitted that the Sessions had an *original*, but not an *appellate* jurisdiction, to make order for the relief of the poor. — LORD MANSFIELD. The question is, Whether this order is a good and legal order upon the face of it? The objections to it are strong, and indeed it is impossible to support it. Taking it as an original order, the objections to it are numerous. By 9 G. 1. c. 7. § 1. "No justice can order relief for any poor person, until oath be made" that he has applied at some public parish-meeting and has been "refused; and the overseers are to be summoned to show cause." His Lordship then recited the preamble of the act, for the purpose of showing the mischief and the remedy that was intended. He then observed, that the mischief and the remedy were both applicable to *all justices*, either singly or sitting collectively at the Sessions; and though the act of parliament only mentions *one*

(a) It was so determined in the case of *Rex v. Smith*, H. T. 10 G. 1.; and also in the case of *Rex v. Holbeach*, E. T. 12 G. 2. 1 Bar. K. B. 46.; and also in *Rex v. The Inhabitants of Belsin*, St. Paul's, 11 Mod. 178.; and also in *Watson v. Turner*, T. T. 7 G. 3. in Excheq. Bull. N. P. 129. 147. 281.

justice, yet it must be understood of every number of justices, having cognizance of the matter. This order then not being stated or found to have been made *upon oath*, is clearly bad (a) : and there is no enforcing it, taking it even for granted that the justices have an original jurisdiction at the Sessions. — And judgment was given for the defendants, for this reason (b), and also because the order by which the pauper was originally allowed the 2s. a-week was not stated in the indictment : but as to the principal question intended to be submitted to the Court, his Lordship said it was of great importance to the system of the poor laws to have the point settled.

467. *Rex v. The Inhabitants of Hemlington, H. T. 17 G. 3. Cald. 6.* — Two justices (c) made an order upon the township of D., to pay a weekly sum towards the maintenance of two bastard children under seven years of age, which had been brought by their mother to the township of H.; the mother being settled at H. and the children at D. The Sessions on appeal quashed the order, and stated that E. G. and her daughter, a bastard, born at H., went under a certificate from H., dated July 11th 1772, to reside in D.; and that, during her residence under that certificate, E. was delivered of two other bastard children. That on the 11th of September 1775, D., by an order of two justices, removed E., the mother, and her daughter to H.; and that E., the mother, carried with her her two other children, though not named in the order of removal, as nurse children, to D. — DAVENPORT showed cause in support of the order of Sessions; and said, that the natural and legal right of a parent to take children under the age of nurture, wherever they might be settled, along with her wherever she might go, was unquestionable : that, as to the question before the Court, which was, by what parish such children, during such residence, were to be maintained? The case of *Wangford v. Brandon* (d), *Rex v. St. Giles's-in-the-Fields* (e), and *Sherronbury v. Bolney* (g), which would be considered as having established, that they must, during their residence with their mother in a parish not their own, be maintained at the expence of their own, were all determined, when the Court had in view a very different inquiry; and not, as here, the

An order of maintenance may be made on the parish in which a bastard is settled; in relief of the parish in which the mother is settled, and to which she had taken it for nurture.

(d) Vol. ii. pl. 46.

(e) Vol. ii. pl. 50.

(g) *Ante*, pl. 423.

(a) This was one of the objections to the order of two justices in the case of *Rex v. Woodsterton*, *ante*, pl. 463. and the case of *Wootton Rivers v. Marlborough*, 5 Mod. 149. was cited; and it was urged that the words of the statute are so strong, both with respect to the oath and the summoning the overseers, that the justices had no jurisdiction unless they complied with them : but it was answered, by saying, that the Court would intend that it has been made upon the oath required, and that the overseers had been summoned according to the direction of 9 G. 1. c. 7. and the cases of *Rex v. Venables*, 1 Str. 680., *Rex v. Holland*, Annally's Rep. 16., and *Rex v. Drake*, 11 Mod. 78., were cited; and the Court said, that they took it that these matters in the 9 G. 1. c. 7. were only matters of direc-

tion concerning the proceeding of the justices, and not concerning their jurisdiction. See Bar. K.B. 207. 247.

(b) See the indictment in the case of *Rex v. Fearnley*, *ante*, pl. 471. for disobeying an order of relief; in which the facts of the application of the pauper to the overseers for relief, their refusing to afford the desired relief, the oath authenticating these facts before the magistrates made the order, and the summons of the overseers to show cause against granting such relief and their refusal, are stated. 1 T. R. 316. — See also the order of relief made in the case of *Rex v. The Inhabitants of Hemlington*, *Ante*, pl. 467.

(c) The statute of 3 W. 3. c. 11. § 11. on which this order was founded, does not require more than one justice.

(a) Vol. ii.
pl. 11.

(b) Vol. ii.
pl. 35.

An order of maintenance, whether made by the Sessions, or by a single justice, is peremptory, for no appeal lies against any such order.

(a) See *Rex v. Justices of Devon*, post, pl. 961.

maintenance, but the *settlement* of the pauper. That, as the case of *Skeffreth and Walford* (a) had settled, that the mother may retain her bastard children under seven years of age, though settled in another parish, it would be much more expedient that they should be maintained as casual poor in the parish in which, if the mother chose, they must necessarily remain; and that this case warranted that doctrine, and the practice that had obtained under the opinion of Dr. Burn. — WALLACE, in support of the rule to quash the order: All that the case says, is, that the mother shall not be separated from her children. — LORD MANSFIELD, stopping Mr. Wallace: And if more, it would be a single authority; whereas there are several against it, in which the point is settled. *Rex v. Saxmundham* (b) is expressly in point, and *Rex v. St. Giles* recognizes the same doctrine. — ASTON J. Whether the child be legitimate or not, does not at all vary the case. The principle is the same; and the authority in *Fortescue* says expressly, "So if a bastard." — WILLES and ASHHURST Js. of the same opinion. — Rule absolute. — Order of Sessions quashed, and original order affirmed. — This point has again been decided in the case of *Simpson v. Johnson*, M. T. 19 G. 3. Dougl. 7.

468. *Rex v. North Shields* (a), H. T. 20 G. 3. Cald. 68. — A justice of the peace made an order upon the churchwardens and overseers of the township of N. S., (upon the oath of A. I., the wife of T. I., a mariner, and then a prisoner in France, that she was very poor, impotent, and not able to work for the maintenance of her three children by her said husband, and that she had applied to the overseers for relief for her said three children, and was refused,) to pay the sum of 2s. 6d. weekly unto the said A., the mother, for and towards the support of the said three children, until such time as they should be otherwise ordered. The Sessions, on appeal, confirmed this order, and stated the following case: That there was, at the time of issuing the said order, and now is, within the said township, a poor-house, established according to the statute made in the 9 G. 1., into which the said overseers were and are willing to receive the said A. I., with her said three children, and offered so to do; and that the said A. I. refused to go herself with her said three children thereto: and it also appeared to this Court, that the three children named in the said order are of the ages therein respectively mentioned; and that the said A. I. hath one other child of the age of eight years, for which she did not seek relief; neither did she seek relief for herself, or is any relief ordered for her by the said order: and it also appeared to this Court, that the said T. I., the husband, is a mariner, and now a prisoner in France, and that the said A. I. is unable to provide for her said three children, in the said order named: and the said three children, in the said order named, are nurse-children under the age of seven years, and in the opinion of this Court ought not to be separated from their said mother; neither in the opinion of this Court is the said mother, not seeking relief for herself, compellable to go into the said poor-house. — WILLES J. The Sessions had no jurisdiction upon this subject, as no appeal lies from an order of maintenance; and the reason is, lest, while the point is litigating, the poor should starve. That, in making orders for the relief of the poor, the stat. 3 W. & M. c. 11. § 11 gives any justice in the parish, or adjoining to it, if none be there, a concur-

rent jurisdiction with the justices in Sessions. The act of 9 G. 1. c. 7. § 4. makes no alteration in this respect; neither is any appeal given by either statute, nor in principle could there be, in any case in which the Court of Quarter Sessions exercise original jurisdiction; as in such case it would be *ab eodem ad eundem*.—Therefore let the order of Sessions be quashed.

469. *Newby v. Wiltshire*, E. T. 25 G. 3 *Cald.* 527. — This was an action, brought by an officer of one parish, against the defendant, who lived in another, for money paid, &c. to the use of the defendant for the maintenance and cure of a poor boy, the defendant's servant. The defendant pleaded the general issue. The cause was tried before *Ashhurst J.*, when a verdict was found for the plaintiff with 32*l.* 12*s.* 7*d.* damages, subject to the opinion of the Court upon the following case: That the defendant is a farmer at *T.* in *Essex*, and is a man of property and substance there. In *May* 1784 the defendant sent his waggon to *C.* with two servants, one a man, the other a boy: and, in returning from *C.* with a waggon-load of oats, when they came to the parish of *S.* in the county of *C.*, the boy sitting on the shafts of the waggon, a cart happened to pass by them, and the whip of the driver of the last touching one of the waggon horses, as they passed, the horse took fright and started aside; whereupon the boy fell off the shafts, and had his leg and thigh fractured by a wheel of the waggon going over him, so that he could not be removed from the parish of *S.* without endangering his life. That the plaintiff, who is a parish officer of *S.*, took care of the boy, and employed a surgeon to attend him; and expended in his necessary maintenance and cure 32*l.* 12*s.* 7*d.*, for which this action is brought. The defendant knew of the accident the same night it happened, and six weeks afterwards went to *S.*, when he found the surgeon going to cut off the limb of the boy which had been fractured; and, before the operation was performed, the defendant asked the boy, if he consented; and, the boy consenting, the limb was taken off. The boy was a yearly servant to the defendant at 1*l.* 10*s.* a year, and was settled at *T.*; and after the cure he served out his year with the defendant, and received his whole year's wages. — LORD MANSFIELD: Whether judicially said, or when other subjects were under consideration, I cannot help thinking in general, that a master ought to take care of his servants in sickness. Upon every principle of humanity he ought; but the question here is, What is the law? and no authority has been produced to show that the parish have a remedy over against the master; and it cannot be. Parishes are bound to take care of their casual poor. There is no express contract to this purpose, nor can any be implied. — BULLER J. I think too it would be very difficult to get over the first objection to the form of the action; for, if the plaintiff sues as an officer, he cannot do this individually, if there are more officers than one: all must be joined. If he does not sue in this character, if the payment was made in his own right, he is a mere volunteer, and there is no pretence for the action. — WILLES and ASHHURST Js. concurring, *Postea* to defendant.

470. *Rez v. Moorhouse*, T. T. 25 G. 3. *Cald.* 554. — This was an indictment against defendant for disobeying an order of two justices. The indictment stated, that the Rev. *H. W.*, and *W. W.*, two of His Majesty's justices of the peace for the West Riding of

A servant, whose limb is fractured by a fall when sitting on the shafts of his master's waggon, is a casual pauper in the parish in which he falls; and must be supported and cured at their expence, and not at that of his master.

The service upon the party of an order, which is charged to have

been disobeyed, must be directly and pointedly alleged, or the indictment cannot be supported.

the county of York, &c. did, by an order under their hands and seals dated the 11th of September 1784, order the churchwardens and overseers of the poor of the township of C., to pay unto S. F. of the township of C., 1s. 6d. weekly, for and towards the support and maintenance of her the said S. F. and her bastard child, until such time as they should be otherwise ordered according to law to forbear the said allowance; and that T. M. then and still being churchwarden of the township of C. aforesaid, not regarding the said order, nor the authority of the said justices, after the said order was delivered to the said T. M., and after the service thereof, contemptuously, &c. did refuse to give any obedience to the said order. To this indictment the defendant demurred; and the prosecutor joined in demurrer.—FEARNLEY had last term obtained a rule to show cause why this indictment, to which the defendant had not then pleaded, should not be quashed: and, upon cause shown, the rule was discharged, LORD MANSFIELD saying, that the Court would not countenance motions to quash indictments, especially where nice and subtle objections in point of form were made the foundation of them. Where the objection is upon the merits, or where the point is otherwise clear and plain, it is another matter. In other cases they ought not even to be entertained. In the present case, if the objection be considered as sound and substantial, let the defendant demur.—After argument of the demurrer, LORD MANSFIELD said, the offence is disobedience of the order of a justice; and the question is, Whether, if the order is on a subject-matter within the jurisdiction of the justice, the facts, which give the authority to make this order, are necessary to be stated, and appear upon the face of the indictment?—And now, *per* LORD MANSFIELD: the Court are of opinion that this indictment is faulty. It does not pointedly allege the service of the order; which is necessary for the purpose of charging the defendant here, where, without it, he is not affected with any knowledge of the demand.—WILLES J. The indictment only sets forth, that *after service* of the order the defendant refused.—BULLER J. This is an essential part of the proof to establish the charge, and ought to have been directly stated. There are no means of trying or inquiring into the consequences of an order, unless it is shown to have been properly served upon the party.—*PER CURIAM*: Judgment for the defendant.

The money directed to be paid weekly by an order of maintenance, is due and payable to the pauper at the commencement of every week.

471. *Rex v. Fearnley, T. T. 26 G. 3. 1 T. R. 316.*—The defendant, as overseer of the poor of C. in Y., was indicted for disobeying an order made by two justices for the relief of S. F. The order directed the churchwardens and overseers of the poor of the said township, or some of them, to pay unto the said S. F. the sum of 1s. 6d. weekly and every week, for and towards the support and maintenance of her and her bastard child, until such time as they should be otherwise ordered, according to law, to forbear the said allowance.—On a demurrer to the indictment, it was objected, that the money was ordered to be paid weekly and every week; and that therefore the defendant could not have been guilty of any disobedience before the expiration of the first week: but it is not averred that the woman was alive at the end of the week; and he cited *Rex v. Moorhouse*. (a)—THE COURT on this point of the case were of opinion, that the sum which was

(a) *Ante*, pl. 470.

ordered to be paid weekly, was due at the beginning of the week.

472. *Hays v. Bryant*, T. T. 29 G. 3. H. Blac. 253. — Debt on bond brought by the surviving churchwarden and overseer of the poor of the parish of R. After *oyer* of the bond and condition, which was to indemnify the churchwardens and overseers of the poor, and the inhabitants and parishioners of R., against the charges which should arise, or be imposed upon them, on account of the maintenance and bringing up of such child or children as one E. W. then went with, and should be delivered of, the defendant pleaded, 1st, *Non est factum*. 2dly, *Non damnificati*. Replication, issue on the first plea. To the second, that E. W. was delivered of two children, and that neither the defendant nor any person on his behalf, provided any food or nourishment for them: by reason whereof the inhabitants, &c. of R., lest the children should perish for want of necessary food and nourishment, were forced and obliged to expend, and did necessarily expend 3*l*. in providing, &c. and so were damnified, &c. Rejoinder, that *no justice's order was ever made upon the inhabitants, &c. of R., for the maintenance and bringing up of the said children, or for the payment or allowance of the money, &c.*; and so if they did expend, &c. it was of their own voluntary act and wrong; and if they were damnified, it was of their own act and wrong, &c. Sur-rejoinder, that they were damnified on account of the maintenance and bringing up of the said children, within the true intent and meaning of the condition of the bond, &c. and not by their own voluntary act and wrong: on which issue was joined. It was proved at the trial, that the defendant had agreed to pay 2*s*. 6*d*. per week for the maintenance of the children, and, in fact, paid it up to Michaelmas 1787, and then refused to pay any further, alleging that the sum was too great. The counsel for the defendant objected, that the plaintiffs or parishioners were not obliged to maintain the children, without a justice's order for that purpose. But Justice Wilson, who tried the cause, over-ruled the objection, and a verdict was found for the plaintiffs. A rule having been granted to show cause why the verdict should not be set aside, and a nonsuit entered, Bond repeated the objection which he made at the trial; and cited the case of *Simpson v. Johnson*. (a) — COCKELL was going to show cause, but was stopped by THE COURT, who held clearly, that an order of justices was not necessary to make the officers of the parish liable to do what they were otherwise under a legal obligation of doing, namely, to provide necessaries for the children; and therefore discharged the rule.

Where a bastard child is born in a parish, and the parents neglect to provide necessaries for its sustenance, the parish officers are obliged to do it without an order of justices for that purpose.

(a) Dougl. 7.

473. *Res v. Beeston*, E. T. 30 G. 3. 3 T. R. 592. — This was a rule calling on the defendant, one of the overseers at D. to show cause why a *mandamus* should not issue, commanding him to pay to W. A. the weekly sum of 6*l*. 6*s*. 2*d*. until such payments should amount to 30*l*. The parishioners or inhabitants assembled in December 1789, consented and approved of the churchwardens and overseers, or the major part of them, entering into a contract with W. A. for keeping, maintaining, and employing the poor of that parish; in consequence of which the three churchwardens and two of the overseers did contract with A. for that purpose; but the defendant, who was one of the overseers, refused to join: and the question was, Whether it was necessary that all the churchwardens

Under the 9 G. 1. c. 7. § 4. which enables the churchwardens and overseers, with the consent of the major part of the parishioners, to contract for the providing for the poor, it is not necessary that all the

churchwardens and overseers should concur; the contract of a majority of them will bind the rest.

(a) See the words of the 9 G. 1. c. 7.

(b) *Vide* *Rex v. Dr. Windham*, warden of Wadham, Cowp. 377.

(c) 3 Mod. 271.
8 C. 1 Show.
76.
Comb. 164.
Carth. 94.
Holt. 570.
Foley, 22.

and overseers should concur in making this contract (a); or, Whether the majority of them did not bind the rest?—It was contended, that whenever a power to do a particular act is given to several persons, they must all concur in executing it, unless they be specially empowered to act *severally* as well as *jointly*.—LORD KENYON C. J. The construction contended for must have prevailed, if the legislature had in express terms required it; but as it would be attended with manifest inconvenience, the argument *ab inconvenienti* ought to have great weight in this case, where the legislature has not so required it. A contract has been entered into in which the parish at large is concerned, and which the act of parliament has enabled the parish officers, with the concurrence of the parish, to enter into: and the question is, Whether one obstinate man, in opposition to all the rest of the parish, in an act in which they are more interested than he is, shall be able to defeat their purpose? I do not mean to say, that the churchwardens and overseers are technically a corporation: but as far as concerns the regulation of the poor of the parish, they stand in *pari ratione*. And in the instance of corporations the act of the majority binds the whole; so much so, that the Court will compel the person who has the custody of the corporate seal, to affix it to any act according to the vote of the majority, though against the consent of such person, as was done in the case of *Wadham College*. (b) However, I do not go on the ground of this similitude: but the foundation of my opinion is this, the stat. 43 *Eliz. c. 2.* has directed that the general acts to be done by the churchwardens and overseers respecting the poor shall be done by the majority of them; and I think that the spirit of that statute pervades all the subsequent acts respecting the government of the poor. The statute in question I consider as engrafted on the 43 *Eliz. c. 2.* qualifying the particular act, but referring for the execution of it to the manner pointed out by that statute. Besides, in common understanding, what is required to be done by the churchwardens and overseers is satisfied by being done by a *majority*. And indeed if we were to determine otherwise, the inconvenience would be so great as to make it necessary for the legislature to interfere and pass another law. This is very different from the case of trustees in settlements, who are generally chosen by the different branches of the family; in which case it is necessary that they should all concur in every act, in order that each may protect the interest which he was appointed to guard. With respect to the case cited of *Rex v. Fairfax* (c), that perhaps was determined on the ground that the churchwardens were to be considered as an integral part; though indeed if that were *res integra*, I should be inclined to make a contrary determination, because the 43 *Eliz. c. 2.* enacts, “that the churchwardens, with certain other persons, shall be “called overseers of the poor.” On the whole, then, as our opinion does not contradict the words of the 9 G. 1. c. 7., but is conformable to the meaning of it, this rule must be made absolute.—All the other judges concurred; and BULLER J. added, the general usage under another clause of this act ever since it passed shows what the general understanding has been of the intention of the legislature upon this point. The 8th section, speaking of the time of notice to be given of appeals from the orders of removal, says, “That no appeal shall be proceeded on, unless reasonable

"notice be given by the churchwardens and overseers of the parish appealing unto the churchwardens and overseers of the other parish." But it never was imagined that a notice given only by three churchwardens and overseers was insufficient; the contrary opinion has always been held: the usage therefore shows what is meant by the general term "churchwardens and overseers." — Rule absolute.

474. *Rex v. Keer*, H. T. 33 G. 3. 5 T. R. 159. — Special verdict: The parish of *B.* is within the hundreds of *L.* and *C.*, in the county of *N.*; and before the making of the order a certain house had been built and fitted up for the reception of the poor within the hundreds of *L.* and *C.*, according to the form of the statute in that case made and provided. A general meeting of the guardians of the poor within the said hundreds was duly held within three calendar months next after the house had been so built and fitted up. *J. R.* and *E.* his wife, at the time of making the order, and long before, were parishioners of *B.* And *J. R.* the younger, being an infant under the age of fourteen years, and poor, and unable to maintain himself, and *J. R.* the elder, and *E.* his wife, being severally poor and unable to provide for themselves, and also for *J. R.* the younger, *J. R.* the elder, on the 24th of August 1791, applied for relief to the guardians of the poor within the said hundreds at their weekly meeting assembled, who refused to allow them any pecuniary relief or assistance from or out of the poor-house, but they offered to relieve the said *J. R.*, by receiving him into the poor-house, and there maintaining and providing for him, agreeably to the statute, &c.; and they accordingly made an order for receiving and providing for him in the poor-house. Upon such refusal of pecuniary relief by the guardians, *J. R.* the elder, not accepting the relief offered by the guardians, on the 24th of August 1791, personally appeared before *R. F. Esq.*; the justice in the indictment mentioned, and having made oath before him, &c. the said justice summoned the defendants, &c. and afterwards made the order, by which the defendants were required to pay and allow to *E. R.* the weekly sum of 1s. towards the maintenance of her infant son *J. R.* The verdict then stated that the defendant's had notice of the order, and neglected to obey, it, &c. — The statute 4 G. 3. c. 90. referred to in the verdict, and which was passed for the better relief and employment of the poor in these two hundreds, after appointing guardians of the poor, &c. enacts, that "all poor persons incapable of providing for themselves within the said hundreds should continue under the government and management of the churchwardens and overseers of the poor of their several parishes, in the same manner as they then were, until the house thereafter mentioned should be built for their reception, and that from and after the general meeting of the guardians, &c. which should be called within three months after the said house should be built, the said poor persons, and persons incapable of providing for themselves, should be under the government and management of the said guardians of the poor; and that all poor children, which at any time should be maintained by the said guardians, should be and remain under their government, the males till they arrive at the age of 18 years, &c.; and that after such boys should have attained the age of 18 years, they should be discharged from the rule and govern-

If a statute direct a poor-house to be built, and that when built the poor of that district shall be under the management of the guardian appointed by the act, the county magistrates have no jurisdiction afterwards, with respect to the said poor.

"ment of the said guardians, and be at their own disposal." — KENYON C. J. That the magistrate had power under the statute 43 *Eliz. c. 2.* to make the order in question, cannot be doubted. But the question here is, Whether that law is not repealed as far as respects these two hundreds? Whether a better system of laws than that of which the statute 43 *Eliz.* forms a part, can be introduced, if properly acted upon, I will not take upon myself to determine: the legislature have thought that that system might be improved in several parts of the kingdom, and among others in these districts. There is one clause in the act of the fourth of G. 3. for the relief and employment of the poor in these hundreds, that is decisive of this question; for it enacts, that after the poor-house shall be built, the poor within this district shall be under the government and management of the guardians of the poor, and that the poor children, who shall be maintained by the guardians of the poor, shall be and remain under their government, until they arrive at a certain age. This verdict expressly states, that the order of the justice was made for the relief of a boy aged 13; and this magistrate seems to have thought that the boy, though living within this district, was still within his jurisdiction, and under the management of the overseers of the poor, for to them his order is addressed: but the act of parliament says, in positive terms, that persons in this boy's situation shall be under the control and management of the guardians of the poor appointed under this statute; and this, consequently, excludes the jurisdiction of the magistrate who made the order in question.

Parish officers are bound to take care of casual poor: and if a person, not a parish officer, takes care of a person coming within that description, and for whom the parish officers would be liable to provide, he has a right to recover against them expenses incurred on such an occasion.

475. *Simmons v. Wilmott*, H. T. 40 G. 3. 3 *Esp. Rep.* 91. — For the particulars of this case, see *ante*, pl. 385. See also *Lamb v. Bunce*, *ante*, pl. 386. *Wing v. Mill*, *ante*, pl. 388. to the same point.

An appeal does not lie to the Quarter Sessions against an order for relief.

476. *Rex v. Justices of Devon*, M. T. 56 G. 3. 4 M. & S. 421. — *Gifford* moved for a rule *nisi* for a *mandamus* to the justices, to enter continuances at their next Quarter Sessions upon an appeal against an order for the relief of a pauper, which appeal the justices had dismissed at the last Sessions, conceiving that they had not any jurisdiction in the matter. He referred to *Burn's Just.* vol. iv. p. 117. 21st edit., and *Rex v. Woodsterton* (a), and contended that *Rex v. North Shields* (b), could not be supported. —

(a) *Ante*, pl. 463.

(b) *Ante*, pl. 468.

PER CURIAM. If in every case of an order for relief an appeal will lie, this will divert the funds designed for the relief of the poor into other channels. This order is not *in perpetuum*, it is to pay until further order; and why cannot the overseers go back to that quarter where it was made, and point out that the pauper's residence is in another parish, and obtain a fresh order? — Rule refused.

Overseers of the poor are bound to endeavour to find work for the able-bodied poor who are out of employ-

477. *Rex v. Collett*, M. T. 4 G. 4. 2 B. & C. 324. — Upon an appeal against an order of two justices for the allowance of the accounts of the overseers of the poor for the parish of K. in the county of S., the Sessions confirmed the order, subject to the opinion of this Court upon the following case. The appellant (Mr. C.), is the proprietor of a considerable estate in the parish of K., a part of which is in his own occupation. In consequence of

the extreme depression in the price of agricultural produce for the last two or three years, the farmers have been rendered unable to make any improvements on their lands, and consequently have employed very few labourers, by which means a considerable part of the labouring population has been totally unemployed, and during this period, all poor persons belonging to the parish, who have been unable to obtain employment, have received sums of money for their maintenance from the parish officers in proportion to the number of their respective families, for which no labour has been required from them. The appellant being dissatisfied with this application of the parish funds, appealed against the overseers' accounts. The respondents, upon the hearing of this appeal, admitted that the persons to whom the sums objected to in the account were paid, were, in fact, both able and willing to work, but that no employment could be obtained for them, which the appellant contended the overseers were bound to provide pursuant to the statute of the 43 Eliz. c. 2., although no evidence was adduced to prove that the overseers could have employed the labourers. It also appeared that none of the sums objected to were paid under or in consequence of any orders from a magistrate. The parishioners were accustomed to meet once a week at the parish workhouse, at which meetings all applications for relief were received, and where all labourers belonging to the parish, who had not in the preceding week been in constant employment, attended to give an account of their earnings, and received such sums as, with the earnings, should amount to a sum deemed competent to their maintenance in proportion to the number of their children. In several cases, it appeared, that able-bodied men with four or five children, having had no employment in the preceding week, received from the overseers from 7s. to 8s. 6d. for the week; having been employed three days, 3s. 6d. to 4s. per week; having been employed two days, 5s. per week, and so in proportion to the number of their children and the amount of their week's earnings. And in all cases this relief was afforded to these persons, solely on the ground of their having been out of employment, without reference or enquiry as to any means they might have of raising money for the supply of their immediate wants by sale or pledge of their household effects; and that in many instances, the weekly relief was afforded to various able-bodied labourers for many weeks in succession. — ABBOTT C. J. It does not appear upon the case before us that the overseers of the poor considered themselves bound to provide work for the unemployed poor, if that were practicable; nor whether they in any way endeavoured to attain that object. Before we determine whether the overseers were or were not justified in giving pecuniary relief to the unemployed poor, the case must go down to the Sessions again, that we may be informed whether any, and if any, what endeavours were made to procure employment for them. All that the Court can now say, is, that undoubtedly it is the primary duty of the overseers to find employment for the poor if possible. And I express that opinion now, for the sake of the poor themselves, to whom no greater kindness can be done than by enabling them to earn their own living by labour, instead of suffering them to eat the bread of idleness, by which their habits and morals must soon be corrupted. — Case sent back to Sessions.

ment. *Quare*, whether they can legally give relief to such persons, otherwise than by setting them to work, and paying them for their labour.

III. Reimbursing Constables' Monies expended. (a)

See stat. 18 G. 3. c. 19. § 4.

The expences of a constable, in prosecuting an assault committed on him in the execution of his duty, cannot be paid by the overseers out of the poor's rate, and are not within the 18 G. 3. c. 19. § 4. : Held, also, that where the appeal is against the overseer's accounts by individuals paying rates within the parish, the *certiorari* is not taken away by 50 G. 3. c. 49.; that act only applying to appeals by the overseers against the disallowance of any items in their accounts by the magistrates.

478. *Rex v. Bird*, E. T. 59 G. 3. 2 B. & A. 522. — The Sessions, upon appeal, confirmed the allowance by two justices of the accounts of *W. K.*, one of the overseers of the poor of the hamlet of *Lower Milton*, subject to the following case : — In May 1817, *M. J.*, a pauper of *L. M.*, applied to *W. K.*, the overseer, for relief, and on that occasion, as well as former occasions, conducted herself in a violent and clamorous manner; and having entered Mr. *K.*'s shop, and refused to leave it, and a considerable mob having collected, and being very clamorous, he ordered *W. P.*, a constable of the said hamlet, to take her into custody. *W. Bird*, one of the appellants, interfering on that occasion in behalf of *M. J.*, an information was laid against him before a magistrate, who directed the constable to prosecute *Bird* at the Sessions for an assault and rescue, and bound the constable over in 50*l.* to prosecute, and *W. K.* in 30*l.* to give evidence. *Bird* was accordingly indicted at the *Michaelmas* Sessions 1817, for an assault and rescue, and acquitted by the jury, but the Court expressed their approbation of the conduct of the overseer, and, in particular, said he had done his duty in preferring the indictment. The first item appealed against, of 4*l.* 12*s.* 8*d.*, was paid for the expence of the constable and witnesses in attending to prefer the bill of indictment against *Bird*; the second item, of 26*l.* 2*s.* 4*d.*, was the amount of the attorney's bill for conducting the prosecution; and the last item, of 4*l.* 19*s.* 4*d.* was paid for the expences of the constable and witnesses in attending the trial of the indictment. No meeting of the inhabitants of the hamlet was called to consider of the propriety of prosecuting *Bird*; but *W. K.* informed many of them of such prosecution being about to be commenced. The accounts of the overseers of the hamlet are allowed, and the allowance entered into a book kept for that purpose, at a meeting of the inhabitants which is called for that purpose, and a monthly notice given in the chapel, which notice merely desires the inhabitants to attend to allow the overseer's accounts, without specifying the nature of the accounts to be allowed. At a meeting called on the 3d of *August* 1817, the first item, of 4*l.* 12*s.* 8*d.*, was allowed, and the allowance signed by three of the inhabitants. At a similar meeting held on the 19th *March* 1818, 16 of the inhabitants attended, nine of whom signed an order for the payment of the sum of 26*l.* 2*s.* 4*d.*, two of them only objected to the payment, namely, *Bird* and another, who refused to sign. At a similar meeting held on the 2d *April* 1818, the last item, of 4*l.* 19*s.* 4*d.*, was allowed, and the allowance signed by three of the inhabitants. A vestry meeting was held on the 5th *April* 1818, called by notice in the chapel, to pass the overseer's accounts generally for the whole year. At this meeting, the accounts containing the items in question were produced and allowed, and the allowance signed by four inhabitants, being all that attended. When this case was called on, it was first

(a) For the manner and the circumstances under which constables are to be reimbursed their expences in cases of riot, tumult, and felony, see the statutes, 27 G. 2. c. 3. and 41 G. 3. c. 78.

objected, that the order of Sessions had been improperly removed, as the *certiorari* was taken away by 50 G. 3. c. 49. § 5., but it was said by the other side, that this order of Sessions was not made under 50 G. 3. c. 49., but under 17 G. 2. c. 38. § 4., which regulates appeals brought against overseers' accounts by the parishioners. And the Court were of this opinion. It was then contended, that these were sums necessarily expended by the overseer in the execution of his office: and the case of *Rex v. Inhabitants of Essex* (a) was cited. And further, that these sums may also be considered as charges which the constable is entitled to make by 18 G. 3. c. 17. § 4., for doing the business of his township. And that although that act appoints a certain mode of making out the constable's accounts, which has not been followed in this case, yet the subsequent approbation of them is a waiver of the formalities prescribed by the act. — THE COURT were of opinion, that these sums of money could not be charged by the overseer upon the parish, as expences incurred by him in the execution of his office, and directed the counsel on the other side to confine themselves to the latter point. Upon this they contended, that these items could not be considered as sums expended by the constable in doing the business of his township, and that it was not a charge contemplated by the act; for the 13 & 14 Car. 2. c. 12. § 18., which is in *pari materia* with 18 G. 3. c. 19. § 4., defines the nature of the charges which the constable is entitled to make, viz. for relieving, conveying with passes, and carrying rogues, vagabonds, and sturdy beggars, to houses of correction, &c. Moreover, the constable has not pursued the directions of the 18 G. 3. c. 19. § 4., the provisions of which act are not mere formalities, but are introduced for the protection of the parish, and ought to be strictly observed. They were then stopped by the Court, who said, that the expences of the constable, which were to be allowed him by the parish, were those necessarily incurred by him on behalf of his parish, which these were not. — Order of Sessions quashed.

(a) 4 T. R. 594.

IV. Relieving Families of Militia-Men. (a)

479. *Rex v. White*, E. T. 22 G. 3. Cald. 183. — In arrest of judgment upon an indictment against the defendants, overseers of *St. J.*, for disobeying an order to reimburse a sum of money advanced by the overseers of the parish of *M.* in the same county, to the family of a substitute in THE MILITIA of the said county, for an inhabitant of the parish of *St. J.*; and which family at the date of the said order dwelt in the said parish of *M.* — Objected, First, That it did not set out any order of maintenance previous to the order of reimbursement, without which first order there could be no legal foundation for the last order. Secondly, That the order was retrospective, being for the payment of a sum supposed to have accrued under an order of maintenance, made long before; whereas the 19 G. 3. c. 72. directs that the order of reimbursement shall be made at the same time with the order of relief or maintenance; and that it was for a gross sum for 83 weeks; and as inha-

In an indictment on the 19 G. 3. c. 72. for the relief of substitutes in the militia, the order of maintenance must be stated or alluded to; and the order of reimbursement must be made at the same time with the order of maintenance, directing that whatever shall

(a) Relief under this head is regulated by 49 G. 3. c. 90. 51 G. 3. c. 118. § 5.; and see 2 Nolan, 428, &c. § 20. 53 G. 3. c. 81. § 10. 49 G. 3. c. 86.

be paid under the one shall be repaid under the other.

bitants may change in that time, they ought not to be so charged, as this circumstance, or that of houses being uninhabited, would produce an inequality in the assessment. Thirdly, That it did not appear, upon the face of the indictment, either that the militiaman, for whom the substitute served, was ballotted, or that the substitute was sworn or enrolled. — LORD MANSFIELD: In indictments the crime with which the defendant is charged, must appear with a scrupulous certainty: and here it is disobedience to the order of a justice. Now it must appear upon the face of the indictment that this was a legal order; for if it is not so, disobedience to it is no crime. Then this is an *order of reimbursement*, which pre-supposes an *order of maintenance*. Such order necessarily must be; for, if the overseers had made the disbursement of their own accord, and without an order for that purpose, they could not legally be reimbursed. Such voluntary payment would not have entitled them to reclaim the sum advanced, because they are not authorized to judge of circumstances. Had the justice of peace recited the order of maintenance, it is admitted the indictment would have been good; and had he even in general terms referred to it, the Court might perhaps (a) have presumed such order properly made. There would then have been some colour of authority for the jurisdiction exercised. But, so far from having recited it, he has not made the slightest reference to it. The indictment, therefore, cannot be supported. Besides, the *order of reimbursement* is not at all connected with the *order of maintenance*, though the act requires, that they should both be made by the same justice *at the same time*, i. e. that whatever shall be paid shall be reimbursed; but this is at the distance of a year, and for a gross sum. — WILLES, ASHEURST, and BULLER, Justices, concurring, Rule absolute, and judgment arrested.

The parish to which the principal militiaman belongs, is liable to reimburse the parish of the substitute the expences of maintaining the substitute's fa-

480. *Rex v. Willis*, H. T. 35 G. 3. 6 T. R. 179. — LORD KENTON C. J. The case is shortly this, one *Spry* of the parish of B., who was drawn by ballot to serve in the militia, procured one E. of M. parish, to serve for him as his substitute: when E. appeared before the deputy-lieutenants in order to be approved, he represented himself as a single man; it turned out in the sequel that he was married, and had several children; E. being approved and sworn in went out into actual service; certain expences were in-

(a) It has been adjudged, that in an indictment where the jurisdiction exercised is founded upon a former order, a general reference to such order, without stating it, is not sufficient to support the indictment. *Rex v. Winship*, ante, pl. 466. But in *Rex v. Mytton*, E. 25 G. 3. 1785, on an indictment on the 21 G. 3. c. 31. for disobeying an order of Sessions at Shrewsbury, on an appeal against a conviction for not giving in a list of his male servants, pursuant to the direction of the statute, Caldecott, on motion in arrest of judgment objected, that the indictment did not state the proceedings before the justice, but only says, that the Ses-

sions, on appeal, ordered, &c. &c.; and it is necessary to state positively that an order of justices was made. — The Court said, that the order of Sessions was the foundation of the indictment, and if the Sessions have jurisdiction, you cannot go into the regularity of their proceedings; for so long as the order remains in force it must be obeyed, and on the trial nothing could serve the defendant but showing that the Sessions have no jurisdiction. In *Rex v. White*, it did not appear that the Sessions had jurisdiction, but here the order of the Sessions is the gist and foundation of the indictment. — Rule discharged. Editor's, MSS. S. C. Cald. 536.

curred in maintaining his family; and the question is, Whether that burden ought to be borne by the parish of *M.*, that had nothing to do with the principal militia-man, or by the parish of *B.* for which the substitute served? It seems to me that the construction put upon the first stat. 26 G. 3. by the prosecutor's counsel, namely, that the words commented upon are merely directory, is the true one. The deputy-lieutenants ought to make every enquiry before they approve of a substitute; if he have more than one child, he ought to be rejected; but if the deputy-lieutenants do take him, then he becomes a legal substitute, and the parish for which the principal serves must bear the expence of maintaining the family of the substitute. The tendency of the defendant's argument is to show that the whole is a nullity; but the consequence of that would be, that a whole regiment must be disbanded, even in the face of an enemy, if it should be discovered that it is composed of substitutes, each person having more than one child. Besides, the words of the second act of parliament are general; and one of the clauses mentions the word *family*. As therefore this substitute was approved and sworn in, and actually did serve in the militia, I think that the whole of the acts of parliament attached on him in that situation, and, consequently, that the parish of *B.*, for which the principal was drawn, are liable to reimburse the other parish the expences of maintaining the family of the substitute; a contrary determination would not only be against the intention of the legislature, but productive of the most dangerous consequences to the whole body of the militia.

—ASHHURST J. The section of the 26 G. 3. alluded to by the defendant's counsel, as giving a power to the deputy-lieutenants to discharge a person improperly enrolled, only extends to the instance of a militia-man who is under a personal disability to serve.

—GROSE J. The words in the 26 G. 3. c. 107. "who shall have "not more than one child," are merely directory; and if we were to put a different construction upon them, the consequence would be, that the principal sending such a substitute as the present would be liable to a penalty of 10*l.* under another section (a), for "not serving himself in the militia, or providing a substitute," notwithstanding such substitute were approved by the deputy-lieutenants, and actually served during the whole time. The deputy-lieutenants have the power of rejecting a person as a substitute, who does not answer the description in the former act of parliament: but if, instead of rejecting, they approve him, and he be enrolled and serve, his family are entitled to the benefit of the latter act. — Judgment for the King.

mily, though the substitute had more than one child when enrolled.

(a) 26 G. 3. c. 107. § 26.

481. *Rex v. Ledbury, E. T.* 38 G. 3. 7 T. R. 558. — THE CASE. *T. E.*, a parishioner of *W.* in the parish of *S. P.*, on the 24th of August 1792, was drawn by ballot to serve in the militia of the said county, and served in the same as a balloted man till the 7th of February 1793, when the regiment being then, and still continuing embodied and called out into actual service, *E.* engaged one *B.* of *L.* to serve in the militia as a substitute for him, who was sworn in on the same day to serve as such substitute before one deputy-lieutenant, who was also commanding officer of the regiment at the time; but *B.* was never approved by two deputy-lieutenants, nor enrolled by the subdivision clerk or the clerk of the general meetings; nor was any certificate or notice of his having

The order for reimbursement must be made by the same magistrate, and at the same time, as the first order of maintenance, and notice of such order must be served on the parish. — The family of a sub-

stitute in service shall be relieved, although he was neither approved or enrolled.

taken such oath transmitted to either of the said clerks. Immediately after *B.* was so sworn in he joined the regiment, was entered upon the muster-roll, and was regularly mustered and exercised, and continued serving in the said regiment during the whole of *E.*'s time, which expired in *August* last, and is now serving in the said regiment till the end of the war. *E.* as soon as *B.* had taken the said oath before the said deputy-lieutenant received his discharge, and has from that time resided in *S. P.* On the 8th of *February* 1793, the wife of *B.* applied to the overseers of *L.* for relief of herself and child about three years old, and produced the certificate of the serjeant of the *H.* regiment, that her husband was then serving as the substitute for *E.*; upon which the overseers took her before a magistrate for the county of *H.*, who ordered the overseers of *L.* to pay to *B.*'s wife 4s. weekly, for the maintenance of herself and her child, but no summons was issued by the magistrate to the officers of *S. P.* to show cause why the order on *L.* should not be made, nor did the parish of *S. P.* receive any notice of the original order of relief till the 1st *June* 1797, when they were informed, that if they did not pay the said money, an order of reimbursement would be made. The parties met in consequence of that information, but nothing being settled then, the parish-officers of *L.* on the 27th of *October* 1797, received a letter from the officers of *S. P.*, declining to pay the money, and giving notice of their intention to appeal against any order that might be made to enforce payment. In consequence of the order marked *A.*, the overseers of *L.* regularly paid to *B.*'s wife, the weekly sums ordered to be paid from the 8th of *February* 1793 to the 27th of *November* 1797, amounting to 26*l.* 6s. On the 29th of *November* 1797 the overseers of *L.* applied to the magistrate for an order on *S. P.* to reimburse the officers of *L.* the said sum of 26*l.* 6s. (but no previous summons appeared to have been issued to the officers of *S. P.* to show cause against the said order,) which said magistrate, after taking the affidavits of the officers as to the expenditure of the said sum of 26*l.* 6s. made an order on the 29th of *November* 1797 to the overseers of *S. P.*, to reimburse the same to the overseers of *L.*, a copy of which order was served on *H. C.*, one of the overseers of *S. P.*, on the 30th of *November* 1797, which he then refused to pay. In consequence of this refusal, he was summoned to appear on the 5th of *December* last, to show cause why he should not pay the penalty of 5*l.* under the statute 34 *G. 3. c. 47. § 3.* On the same day he personally appeared in pursuance of such summons, but showing no sufficient cause, he was convicted in the sum of 5*l.*, which said sum *C.* paid to the overseers of *L.* on the 8th *December* following, but on the day after the conviction, being the 6th of *December*, he gave a written notice of appeal to the next Sessions, against the order so made on 29th *November* 1797, and also another notice of appeal against the conviction on 29th *December* 1797. The Sessions quashed the order of 29th *November* 1797, and the conviction grounded thereon, subject to the opinion of the Court. — LORD KENYON C. J. The act of parliament directs in positive terms that the order for reimbursement shall be made by the same justice, and at the same time, as the order for maintenance; and such has been the construction before put on these words in the case referred to. There seems also good reason

for requiring that to be done; as the inhabitants of a parish are a fluctuating body, and it would be unjust that one set of persons at a great distance of time should be called on to discharge burthens which were incurred before they were become inhabitants. Neither is there any difficulty in the order of reimbursement being made prospectively. The 33 G. 3. c. 8. § 7. which has been relied on, as specially authorizing the order of reimbursement in its present form, has reference to its being made *in like manner* as is therein before directed, namely, in the 3d sect., upon which I have already given my opinion, that it must be made by the same magistrate, and at the same time as the order of maintenance; whereas this order was not made upon the parish of *S. P.* until above four years after the first order upon *L.*, which cannot, therefore, be said to be in compliance with or under the authority of the act. And the concluding part of the first order cannot be taken to be an order on the parish of *S. P.*, being directed not to them but to the overseers of *L.* If the objection had only been that the substitute was not approved or enrolled, probably I should have thought (though it is not necessary to decide that point) that upon the principle of our determination in *Rex v. Willis*, that provision in the statute was only directory; and that if the substitute were sworn and actually served, he was entitled to all the benefits of the act: in the same manner as where the 17 G. 2. c. 3. § 1. directs that the poor's rate shall be published in the church the next *Sunday* after the allowance of it, and that no rate shall be deemed valid without such notice, a person paying under such a rate will nevertheless gain a settlement thereby. — ASHHURST J. The order should have been served on the parish of *S. P.* before any crime could attach on them for disobeying it. — PER CURIAM: Rule for quashing the order of Sessions discharged.

482. *Rex v. Preston*, *H. T.* 51 G. 3. 13 *East*, 313. — On appeal against an order and certificate of a justice, the Sessions set aside the order and certificate, subject, &c. The order in question was directed to the overseers of *P.*, and recited in substance, that *A. E.* of *P.* had, on the 10th of *February* 1810, made oath before the magistrate, that her husband was a substitute then serving in the militia of that county, embodied and called out into actual service: that he was serving for *Pilling* in the said county, and had left her and one child, *Ann*, born in lawful wedlock, and under the age of ten years, and then dwelling in *P.*, who were unable to support themselves. Therefore the magistrate ordered the overseers of *P.* to pay the said *A. E.* out of the poor's rates, 4s. weekly, for the support of herself and child, from henceforth till otherwise ordered. And the same magistrate certified, under the same date, to the overseers of *Pilling*, that he had made the said order for relief; and he thereby directed the lastmentioned overseers to reimburse the money so paid, in pursuance of that order, to the overseers of *P.* The case further stated, that *J. E.*, mentioned in the order, was, on the 28th of *November* 1807, enrolled in the second regiment of *R. Lancashire* militia as a substitute for *M. G.*, who had been regularly balloted to serve in the militia for *Pilling*, and has ever since such his enrolment served as a private soldier in that regiment, which, during the whole of that time, has been embodied and called out into actual service. At the time of his

A substitute in the militia, fraudulently and falsely declaring, at the time of his enrolment, that he had no wife or family, when, in fact, he had a wife and one child, is not entitled to any parochial allowance for their relief, under the stat. 43 G. 3. c. 47. § 2. & 5.

enrolment he *falsely and fraudulently represented* and declared, that he had no wife or family, he having at that time a wife and one daughter then and still living at *P.*; but he neither then had, nor now has, any other child. Application having been made by the wife and daughter for an allowance under the stat. 43 G. 3. c. 47; and it appearing to the justices, to whom such application was made, that they were the wife and daughter of one serving and enrolled in the militia of *England*, and unable to support themselves, he made the order and certificate appealed against. The proviso in the fifth clause of the statute, that the substitute shall undertake and make provision for the maintenance of his other children, to the satisfaction of the justice of the peace to whom application shall be made under the act for the relief of his family, was not complied with in any manner whatever. A demand having been made, in pursuance of the order and certificate abovementioned, the overseers of *Pilling* appealed against them to the Sessions, being the next Sessions after such demand; the question turned upon the construction to be given to the second and fifth sections of the stat. 43 G. 3. c. 47.—LORD ELLENBOROUGH C.J. It is only necessary to read the words of the act in this case; they are unpervertible: they refer as well to the case of a substitute who, having a wife and child, or children, shall fraudulently and falsely declare at the time of his enrolment, that he has no wife or family, as to one who having more than one child, shall fraudulently and falsely declare that he has only one: in either case he is excluded from the benefit of the provision. But if he choose to tell the truth at the time, that he has a wife and one child, they are to be provided for: or if, having more than one child, he undertakes and makes provision for the rest, the magistrate is empowered to order the allowance for his wife and one child under the age of ten years. This man, then, having made the fraudulent and false declaration stated, is excluded from the benefit of the allowance by the plain terms of the legislature. — Order of Sessions confirmed, disallowing the order of the justice of peace.

V. Of erecting Workhouses.

See Stat. 55 G. 3. c. 137.

Workhouses situated in a different parish, are to be considered as part of that parish whose poor reside therein.

483. *Rex v. St. Peter and St. Paul in Bath*, T. T. 22 G. 3. Cald. 213. — The case: The parishioners of the parish of *St. P.*, in conjunction with the parishioners of the parish of *St. J.*, in the city of *Bath*, purchased a piece of ground situate in the parish of *L. and W.*, and built thereon a house for the reception and maintenance of the poor of the several parishes of *St. P.* and *St. J.* there. In *September* last, the pauper, *W. H.*, being impotent and unable to work, was, together with all the other paupers belonging to the parish of *St. P.*, removed from that parish to the new erected house in *L. and W.*, where he and the rest of the poor of that parish have been ever since maintained at the expence of the parish of *St. P.*, and without any charge to the parish of *L. and W.* The said *H.*, and all the other paupers, who went into the new-built house, carried with them certificates directed to the parish of *L. and W.*, signed by the parish-officers of *St. P.*, and allowed by two justices of the peace as the statute directs, acknowledging them to be settled inhabitants of the parish of *St. P.*

and which were delivered to one of the officers of the parish of *L.* and *W.* Notwithstanding the certificate of the pauper, *W. H.*, the parish officers of *L.* and *W.* obtained an order for his removal, though he had not been chargeable to their parish. The Sessions confirmed the order, &c. being of opinion that the pauper was not the object of the certificate act, and consequently not protected by it. — LORD MANSFIELD. To be sure it was a radical defect in the system of the poor-laws, more especially in a commercial and manufacturing country, that the poor should be all confined to their respective parishes. Possessed of industry, vigour, and skill, a man who could not find work at home was prohibited from seeking it abroad. The legislature endeavoured to cure this evil by introducing certificates; under which the pauper is at liberty to go and reside wherever he pleases. And the true principle is, to extend this protection to the utmost latitude. There should be no clog, no restraint. But then the act did not compel the granting of them. The want of workhouses was, however, soon felt as an inconvenience. They were not long after introduced by the legislature (a); and, if well regulated, a most desirable mode of relief they are. They supply comfort and accommodation for those who cannot work, and employment for those who can. In many instances, which have chanced to fall within my knowledge, particularly on the Midland circuit, they have reduced the annual amount of the poor-rates one half. But this benefit could not, within itself, be received by every separate district; for, where parishes were small, the expence of the necessary buildings was too heavy for them. This obstacle was foreseen by the legislature, and provided against accordingly. Though single parishes could only contract for these buildings within their own limits, yet, where two unite, no restrictions were imposed; the power is general. It is obvious, that the workhouse of a single parish must be most conveniently situated in that parish. Upon a similar principle, where many parishes were jointly concerned, the legislature did not require that the building should be raised in either of the confederate parishes; because, in such case, a spot might be found in some other parish, more central and better accommodated to their general convenience than any part of their united district. The act, therefore, authorizes the purchase anywhere; and, when once the joint purchase is made, wherever it be, it becomes a part of the local system of each contracting parish; and, if the poor will not go there, they are not entitled to relief. The same narrow spirit that has impeded the progress of this beneficial plan, now starts up again to limit this power, and almost to overthrow the act itself; which was calculated ultimately to reduce expence as well as promote industry and encourage manufactures, by employing all the poor under the eye of one master. But the objection is not warranted by the certificate act. Whatever might be the leading motive in passing that act, that statute authorizes the whole body of the poor, of whatever denomination and with whatever object, to leave their own and remove into any other parish; provided they can obtain the protection of a certificate. Contrary to the spirit and policy of the act, and not obliged by the letter, the Court will not make an exception of the case which the act itself has not excepted. The true policy is certainly to enlarge, and not to narrow the district within which the poor are to be

(a) See 9 G. 1. c. 7. § 4.

(a) *Peart v. Westgarth*, ante, pl. 54. accordant; but see *Rex v. Leigh*, ante, pl. 63. contra.

maintained (a). As to the objection of its being an injury to property, the introduction of a numerous inhabitancy, by increasing the consumption of provisions, must unavoidably add to the value of that land, the produce of which is by such a demand consumed. As to the possibility of a few illegitimate children acquiring by birth a settlement in the parish within which the workhouse stands, it is impossible to foresee every inconvenience; and all that can be said is, that *de minimis non curat lex*. — *BULLER J.* As to the last difficulty raised, I doubt whether the poor-house, so occupied and become in this manner the perpetual property of the united parishes, is not to this purpose rather to be considered as part of those parishes to which it so belongs, than of the parish in which it is locally situated; upon the same principle as that of many resolutions in the case of such children born in gaols. — *WILLES* and *ASHHURST Js.* concurred, and both orders quashed.

CHAPTER VIII.

BASTARDS.

- I. *The Statutes relating to Bastards.*
- II. *Who shall be deemed Bastards.*
- III. *The Duty and Authority of the Parish Officers.*
- IV. *The Authority of the Justices.*
- V. *The Complaint and Examination.*
- VI. *The Summons and Commitment.*
- VII. *The Bond of Indemnity and Security.*
- VIII. *The Form of the Order of Bastardy.*
- IX. *Of the Appeal.*
- X. *Of the Jurisdiction of the Sessions.*
- XI. *Of quashing Orders of Bastardy.*
- XII. *The Punishment of the Mother and reputed Father.*
- XIII. *Of Bastards born in LYING-IN HOSPITALS.*

I. *The Statutes relating to Bastards.*

18 Eliz. c. 3. § 2, 3. 7 Jac. 1. c. 4. § 7. 3 Car. 1. c. 4. § 15.
 13 & 14 Car. 2. c. 12. § 19, 20. 6 G. 2. c. 31. 49 G. 3. c. 68.
 50 G. 3. c. 51.

II. *Who shall be deemed Bastards.*

484. A BASTARD, by our English laws, is one that is not only begotten but born out of lawful matrimony. The civil and canon laws do not allow a child to remain a bastard if the parents afterwards intermarry, and herein they differ most materially from our law; which, though not so strict as to require that the child should be *begotten*, yet makes it an indispensable condition, that it shall be *born* after lawful wedlock: all children, therefore, born before matrimony are *bastards* by the law of England.

All children born before matrimony are bastards. Co. Lit. 254. 1 Roll. Abr. 357. 1 Com. Dig. 579.

485. *Radwell's case*, T. T. 18 Edw. 1. Roll. 6. Co. Lit. 124. b. — On a special verdict it was found that Henry, the son of B., who was the wife of R. R. deceased, was born *per undecim dies post ultimum tempus legitimum mulieribus constitutum*; and thereupon it was adjudged, that the aforesaid Henry cannot be considered the son of the aforesaid R., according to the laws and customs of England.

All children born so long after the death of the husband, that by the usual course of gestation they could not be begotten 124. b. in *notis*.

486. *Radwell's case*, Lord Hale's MSS. Co. Lit. 124. — In *assize* by J. R. against Henry, son of B., who was wife of R. R.; *quia computum est* that the aforesaid Henry was born *eleven days after forty weeks*, which is the usual time in law for a woman going with child; *ex quo* the aforesaid R. had no access to the aforesaid Beatrice for one month before his death, it shall be presumed

The usual time for a woman going with child is *forty weeks*. Carth. 469.

that the aforesaid *Henry* is a bastard. — Judgment was therefore given for the plaintiff. (a)

But the time of gestation may be accelerated, or retarded by accidental causes.

S. C. Palm. 9.

487. *Alsop v. Bowtrelle*, M. T. 7 Jac. 1. Cro. Jac. 541. — The question was, Whether a woman being delivered of a child *forty weeks and nine days* after the death of her husband, the child shall be a bastard? It was proved that her deceased husband's father did much abuse her, and caused her to lie in the streets. Three physicians (two of them doctors of physic) made oath that the child came in time convenient to be the child of the party who died; and that the usual time for a woman to go with child is *nine months*, at thirty days to the month, and *ten days*; and that by reason of want of strength in the woman or child, or by ill usage, she might be a longer time, to the end of ten months or more. And the physicians farther affirmed, that a perfect birth may be at seven months, according to the strength of the mother or child; and it may be deferred by accident, which is commonly occasioned by infirmities of the body, or passions of the mind. The child was adjudged legitimate. (b)

A child may be born within such a time that he may be more than ordinarily legitimate.

488. 21 Edw. 3. pl. 39. — If a man die, and his widow soon after marry again, and a child is born within such a time as that by the course of nature it might have been the child of either husband; in this case he is said to be more than ordinary legitimate, for he may when he arrives to the years of discretion choose which of the fathers he pleases.

Issue born during a divorce are bastards, and also during a separation, if no access be proved. 1 Roll. Abr. 359.

489. 1 Blac. Com. 457. — In a divorce *à mens et thoro*, if the wife breed children they are bastards; for the law will presume the husband and wife conformable to the sentence of separation, unless access be proved; but in a voluntary separation by agreement, the law will suppose access unless the negative be shown: and in case of divorce in the spiritual Court *à vinculo matrimonii*, all the issue born during the coverture are bastards.

If the husband be impotent, issue are bastards. Co. Lit. 244. 1 Roll. Ab. 358. 1 Bac. Ab. 310.

490. *Foxcroft's case*, 2 Roll. Abr. 353. — If there be an apparent impossibility of procreation on the part of the husband, as if he be only eight years old, or the like, there the issue of the wife shall be bastard (c); and therefore where a man who was bedridden married a pregnant woman in his chamber, who was delivered twelve weeks after, the child was adjudged a bastard, from the apparent impossibility of his being the father of it.

The child of a *feme covert* conceived and born while the husband is *extra quatuor maria*, is a BASTARD.

491. *Rex v. Alberton* (d), M. T. 10 W. 3. 1 Ld. Ray. 395. — An order was made by two justices that *A.* should maintain a bastard child. The case was thus: — A *feme covert*, during the absence of her husband at *Cadiz*, was delivered of a child; and her husband was not in *England* from the time of her conception till she was brought to-bed. The order being removed into the King

(a) Vide Mr. Hargrave's observations on this Case, Co. Litt. 125. in *notis*.

(b) *Si partus nascatur post mortem patris (qui dicitur posthumus) per tantum tempus quod non sit verisimile quod possit esse defuncti filius, et hoc probato, talis dici poterit BASTARDUS.* Bracton, lib. 5. fo. 417. b. 1 Roll. Abr. 356. — See also Co. Lit. 130. b. in *notis*, Dr. Hunter's opinion on this subject.

(c) In *Burie's case*, 5 Co. 98. it is

said, that if a man be divorced from a woman *propter perpetuam generalem potentiam*, and then marry another, have issue by the second marriage which continues without divorce, issue are lawful, for that a man may *habilis et inhabilis diversis temporibus* and the second marriage, not being avoided by divorce, stands good in law. See also 2 Leon. 169. Jenk. Rep. Nov. 72. and Moor, 225.

(d) See *Rex v. Luffe*, *post*, pl. 50

Bench, the question was, Whether this child was a bastard within the 18 *Eliz. c. 3.*? the words of which statute are, "children begotten and born out of lawful matrimony," which cannot be said of this case, the mother being married at the time of the birth of the child, so that there is a father bound to provide for it. And if such a mother should kill such a child, she could not be guilty of murder within the 21 *Jac. 1. c. 27.* — *Sed non allocatur*: for *PER CURIAM*, He is a bastard who is begotten and born of a *feme covert* while her husband is beyond the four seas; and in a real action, if general bastardy be pleaded, the bishop ought to certify such a one bastard. Indeed, in case of *bastard eigne*, the bastardy must be pleaded specially, because such a one is *mulier* by the canon law, and the bishop would certify him such. And where a man is bastard, he is such to all purposes, and why not within the 18 *Eliz. c. 3.*; for though the statute of 21 *Jac. 1. c. 27.* is a *penal law*, yet this act is a *remedial law*.

S. C. 2 Salk.
483.
Carth. 469.
1 Salk. 122.
Holt, 507.
5 Mod. 419.

492. *Rex v. Murray, M. T. 3 Ann.* 1 Salk. 122. — Upon a special order of Sessions the question was, If the husband be *ultra mare*, and during the time the wife be got with child, whether this child be a *bastard* within 18 *Eliz. c. 3.*? — THE COURT: If the husband was out of the *four seas* all the time of the wife's going with child, the child is a bastard; but if he were here at all within the time, it is legitimate, and no bastard.

To make the child of a *feme covert* a bastard, it must appear that the husband had no access for nine months.

493. *St. George and St. Margaret's, Westminster, M. T. 5 Ann.* 1 Salk. 123. — On a special order of Sessions, the following facts were stated for the opinion of the Court: *H.* was divorced *à mensâ et thoro*, and afterwards his wife lived with one *E.* in adultery in the parish of *St. Giles*, and had several children by her, who were baptized and registered in the name of *E.* — THE COURT: When a woman is divorced *à mensâ et thoro*, the children she has during the separation are bastards, for we will intend a due obedience to the sentence unless the contrary be showed; but if husband and wife without such sentence part and live separate, the children shall be taken to be legitimate until the contrary be proved, for access shall be intended.

Children born during a divorce *à mensâ et thoro*, are presumed bastards.
Co. Lit. 235. a.

494. *Rex v. St. Bride's (a), E. T. 3 G. 1. Str.* 51. — *A.* married *B.* and lived with her five years in the parish of *St. B.*, and had by her four children, who were all provided for: at the end of the five years he left his wife and married another woman, with whom he lived somewhere in *England*, but he never saw his first wife *B.* from the time of his going away from her. *B.* after the separation having heard nothing for a long time from *A.*, married a second husband, by whom she had eight children, in the parish of *St. A.*, who all went by the name of the second husband, three of which revived. The Sessions, presuming that the second marriage was *void ab initio*, adjudged that her settlement and that of her three children was in the parish of *St. B.*, where the first husband lived, deeming them the legitimate issue of the marriage. — THE COURT quashed the order as to the children, but confirmed it as to the wife; because the second marriage being absolutely void, her settlement is that of her first husband; and it being adjudged that the first husband had no access for 17 years, no presumption will be admitted, but that these are the children of the second marriage; and they not being born in the parish of *St. B.*, nor having dwelt there 40 days, can have no settlement in *St. B.*

Children born under a second supposed marriage during the life of the first and legal husband are bastards, if it appear that he had no access.
S. C. B. R. H. 79. 80.
Sess. Cass. 117.
pl. 113.
Set. & Rem. 102.

(a) See *Rex v. Luffe, post*, pl. 508.

The mere proof of criminal conversation alone is not sufficient to bastardize the issue.

Sess. Cas. 329.

The mother may give evidence that the child was not her husband's. B. R. H. 80. Com. Rep. 140. and see *R. v. Reading*, *post*, pl. 500. & Cowp. 593.

Though the husband be in England, yet if *no access* can be proved, the issue are **BASTARDS**.

3 Peer Will. 275.

Andrews, 9. Wils. 340.

Co. Lit. 244. note 2.

Salk. 120.

Cro. Jac. 541.

(a) See *Rex v. Luffe*, *post*, pl. 508.

Improbability that the husband was the father not sufficient to bastardize the issue.

The reputed father of a bastard child may give evidence that he was not married to its mother.

Rex v. Bramley, *post*, pl. 507.

495. *Rex v. Browne*, T. T. 2 G. 2. 2 Str. 811. — Upon an order of bastardy, it was stated that the husband had been absent *six years*, and that during his absence the defendant had had carnal knowledge of the wife, and therefore they adjudge him to be the putative father. — THE COURT: This order must be quashed, for his lying with her is not a sufficient reason to infer him the father of this child; and though the justices need not show the ground they go upon, yet if they do, and it appear no sufficient ground, their order will be bad.

496. *Clerk v. Wright*, H. T. 3 G. 2. in C. B. — On an issue out of Chancery to try the legitimacy of the defendant, the frequent declarations of the mother that the child was not her husband's were offered in evidence. — By EYRE C. J. The mother is not alive, and therefore these declarations are not admissible; but if she had been here herself, she might have been examined as to this fact.

Reading, *post*, pl. 500. & Cowp. 593.

497. *Pendrel v. Pendrel* (a), H. T. 5 G. 9. 2 Str. 925. — Upon an issue out of Chancery to try whether the plaintiff was the heir at law of one T. P., it was agreed that the plaintiff's father and mother were married and cohabited for some months; that they parted, she staying in L. and he going into S.; that at the end of *three years* the plaintiff was born, and there being some doubt upon the evidence whether the husband had not been in L. within the last year, it was sent to be tried. The plaintiff rested at first upon the presumption of law in favour of legitimacy, which was encountered by strong evidence of *no access*; and it was agreed by the Court and counsel, that the old doctrine of being *within the four seas* was not to take place, but the jury were at liberty to consider of the point of *access*; which they did, and found against the plaintiff. — RAYMOND C. J. allowed the defendant to prove the mother to be a woman of ill fame; but he would not allow the mother's *declarations* to be given in evidence till she had been called, and denied them upon the cross examination.

498. *Lomax v. Holmden*, M. T. 6 G. 2. 2 Str. 940. — The question at bar in ejectment was, Whether the lessor was son and heir of C. L. deceased? which depended on the question of his mother's marriage; and that being fully proved, and evidence given that the husband was frequently at L., where the mother lived, so that access must be presumed, the defendants were admitted to give evidence of his inability from a bad habit of body; but their evidence not going to an *impossibility*, but an *improbability* only, that was not thought sufficient, and there was a verdict for the plaintiff.

499. *Rex v. St. Peter's*, E. T. 8 G. 2. Burr. S. C. 25. — Two justices removed *Joseph*, the son of J. H., from St. P.'s to O. S., as being a BASTARD born on the body of H. A. at O. S. On appeal, the Sessions took the examination of J. H., who gave evidence that H. A. (who was then dead) cohabited with him for several years as man and wife, but that they never were married; that the said H. A. was, during the time they cohabited together, delivered of three children, one of which, the pauper, was born in the parish of O. S.; that they were all three reputed and baptized as his legitimate children, and that the marriage was never questioned in the life-time of the said H. A. — The Sessions held

this to be insufficient to support the order of the two justices. — **HARDWICK:** The first order goes a little too far, in calling the pauper "A BASTARD, the son of J. H.;" but that is only an impropriety, and the order is sufficiently good for removing him to the parish where he was born. — It is an apparent fact, that J. H. was never married to H. A.; why then was he an incompetent witness? It was an objection to an order of bastardy two terms ago, in the case of *Rex v. Willey* (a), that it was founded upon the evidence of a married woman, which ought not to be admitted to discharge her husband; but this man does not swear to discharge himself; for whether he be the *legitimate* or only *the natural* father of the child, he is equally bound to maintain it. — Order of Sessions quashed.

(a) Vide post, pl. 586.

500. *Rex v. Reading* (a), M. T. 8 G. 2. *Annally's Rep.* 79. — It was moved to quash an order of two justices, and two orders of Sessions made thereon, whereby the defendant was adjudged father of a bastard child. The first order of Sessions was a special order, setting forth the particular circumstances of the case, and charging the defendant, upon the oath of a *feme covert*, with getting a bastard upon her: this order adjourned the matter to take the advice of the judges of assize, but they declined giving their opinion in it. The second order resumes the affair, and adjudges the defendant to be the father of the child: there were other witnesses which said that the husband was resident about seven miles from the wife's habitation. Exception was taken to these orders, that the wife is the only evidence, and that she is not a competent witness in law to exonerate her husband of the charge and burthen of this child. — **HARDWICKE C. J.** The wife is not a competent witness in point of law in this case, that is, to prove the whole fact; though it seems she may be a competent witness to prove the *criminal conversation* between the defendant and herself, by reason of the nature of the fact, which is usually carried on with such secrecy that it will admit of no other evidence; therefore, as to the fact of the defendant's conversation with her, she may be a good witness, but this is only from the necessity of the thing. But then in the present case it has gone further, for the wife is the only witness to prove the *absence* and *want of access* of her husband; whereas this might be made appear by other witnesses, and, therefore, the wife shall not be admitted to prove it, since there is no necessity that can justify her being a witness in this case. In the case of *Pendrel* before cited, there was the strongest evidence imaginable to prove the want of access of the husband: it was made appear by several of the husband's relations, who watched him for that purpose, that he was in S. all the time his wife was with child, and that she resided in L. the whole time: the wife thereupon is not to be admitted a witness to prove that her husband had no access to her; and the testimony of the other witnesses, that he resided about seven miles off, shows an apparent possibility of access: it must be of a very dangerous consequence to lay it down in general that a wife should be a sufficient sole witness to bastardize her child, and to discharge her husband of the burthen of his maintenance. But the opinion **THE COURT** is of at present will not be a precedent to determine any other case wherein there are other sufficient witnesses as to the want of access. But the foundation that is now gone upon is the wife's

A *feme covert* may, on a question of bastardy, be admitted to give evidence of the fact of *criminal conversation*, but not to prove the *non-access* of her husband. *Andrews*, 10. 2 *Sess. Cas.* 286.

(a) See *Rex v. Luffe*, post, pl. 508.

being sole witness. — PAGE J. This is something similar to the cases of HUE AND CRY, where, by statute, in an action against the hundred, the person robbed is admitted a witness, from the necessity of the thing, as to those matters which generally can be proved by none but himself; as that he is robbed, and of what sum, and in what place; but of all other things which may possibly be proved as well by other evidence, he is no witness in law, nor does the statute extend to it; as whether the place is within the hundred, &c. — PROBYN J. In cases of violence committed by the husband against the wife, she herself is admitted a witness, as in the case of Lord *Audley*; and in the cases of exhibiting articles of the peace from the necessity of the thing, since it may be done at a time when no one else can prove or know it. — LEE J. In the case of *Regina v. Murray* (a), where a child born in lawful wedlock was proved to be a bastard, no such exception was taken as in the present case; but the defendant merely insisted upon the old notion of the husband's being within the four seas. In the case of *Ramsay*, on an indictment on the statute 3 Hen. 7. c. 2. for forcibly taking away a woman and marrying her, the wife was admitted a witness, because none else except the defendant were present. Therefore, it is very proper to admit this woman to prove what was done in secret, and what it cannot be presumed there are other witnesses to prove: but then it must be admitted no further than necessity warrants; and in all other cases the rule of law is to be adhered to.

(a) *Ante*, pl. 492.

The evidence of the parish register cannot be contradicted by the day-book.

If non-access of a husband be legally proved, the justices may make an order of bastardy, without enquiring whether the husband be alive or dead.

S. C. And. 8. Annally's Rep. 879. 1 Will. 340.

(a) See *Rex v. Luffe*, *post*, pl. 508.

501. *May v. May*, E. T. 10 G. 2. 2 Str. 1073. — In a question on the plaintiff's legitimacy, it was resolved, that there can be only one register in one parish; that the day-book in which entries may be originally made cannot be read to contradict the register.

502. *Rex v. Bedall* (a), T. T. 10 G. 2. 2 Str. 1076. — An order of justices was made upon *Moor* as the putative father of two bastards born of the body of *E.*, the wife of *R. S.*, in which it was stated, that, for seven years before, the husband had had no access to her, she having never seen or heard of him in all that time, and not knowing whether he was alive or dead; which the justices adjudged to be true, and that *M.* was the father of the bastard children. Upon appeal to the Sessions the case was stated with some variation, viz. that in 1728 she was married to *S.*, then a soldier, in a barn, by a person not in the habit of a clergyman; that there had been no access for seven years; but it appeared by a certificate from the commissary-general's office, dated 7th April 1737, and from the evidence of *S. C.*, that one *R. S.*, who he was told was formerly a soldier, was mustered as a private gentleman in the third troop of horse guards from June 1733 to February 1736, though *C.* said he could not take upon him to swear that it was the same *R. S.* pretended to be married as aforesaid: upon this supposition of the husband's being alive, the Sessions were of opinion the children were not bastards, and reversed the order of the two justices. — Upon debate, (in the absence of THE CHIEF JUSTICE) the order of Sessions was quashed, and the order of two justices confirmed; for it being stated in both orders that there was no access, it was immaterial whether the husband was alive or not: but that if it were material, here was no evidence to prove it, the identity not being sworn to; or if it was,

yet the evidence of his being alive was improper to have been received, and even the marriage itself doubtful.

503. *Rex v. Woodchester*, M. T. 16 G. 2. MSS. — An order in 1731 to remove A. and his wife from N. to W. was not appealed from. They afterwards returned to N. and had there three children, who were now sent by order of justices from N. to W. with their father. Upon appeal, it was offered to be given in evidence, that A. had a former wife, and, consequently, the children born at N. were bastards, and settled there. The Sessions would not permit W. to go into this evidence. — PER CURIAM: Both orders must be confirmed. The marriage being established by the first order, which was acquiesced in, the settlement of the children follows of course, and can no way be impeached but by entering into the merits of the first order. Nothing is better established than that an order unappealed from is conclusive. (a)

504. *Rex v. Rooke* (b), M. T. 26 G. 2. Wils. 340. — An order was made that the defendant should maintain a bastard child, and it was made upon the oath of a married woman alone, who swore that her husband was in gaol long before she was got with the bastard child and ever since, and that she had no access to him, and that R. got the bastard. — PER CURIAM: It was said by Lord Hardwicke, in *Rex v. Reading* (c), that although a wife may be admitted to prove the fact of adultery, she shall not be admitted to prove that her husband had no access, because that may be proved by other persons, and an order of bastardy, therefore, could not be made on her oath alone. The case of *Rex v. Bedall* (d) differs from this, for there were witnesses to prove the husband had no access; and as the justices have determined solely on the evidence of a wife, the order must be quashed.

505. *Stevens v. Moss*, E. T. 17 G. 3. 3 Cowp. 591. — The lessor of the plaintiff claimed to be entitled to the premises for which the ejectment was brought, as cousin and heir at law of A. S., who died seised. And the only question in the cause was, Whether the lessor of the plaintiff was the legitimate son of F. and M. S.; or was born of M. before their marriage? — For the plaintiff the register of the marriage of F. S. and M. P., dated November 2d 1703, and the register of the birth of the lessor of the plaintiff, in the following words: — "Christenings 1704, 'Samuel, son of F. and M. S., baptized July 3d,' were produced. It was insisted on the part of the defendant, "that the "lessor of the plaintiff was born and privately baptized before "the marriage, and that there was a public baptism after the "marriage," which accounted for the register. They first offered witnesses to general declarations by the father and mother, that Samuel, the lessor of the plaintiff, was born before marriage, which evidence Mr. Baron Eyre was of opinion to reject. They also offered evidence, that there was a general reputation in the place, where the father and mother and Samuel resided, "that "he was born before marriage;" which Mr. Baron Eyre was likewise of opinion to reject. They further offered to produce one J. D. as a witness, to prove that he had heard one C. say many times, "that the lessor of the plaintiff was a base-born child," which evidence was rejected. And lastly, they offered an answer

No evidence shall be heard upon a second order to illegitimate the children.

S. C. 1 Burr. Sett. Cas. 191. 2 Str. 1172. See 3 Burr. Rep. 1840.

(a) Salk. 524. Carth. 516.

An order of bastardy against a married woman cannot be made on her testimony only.

(b) See *Rex v. Luffe*, post, pl. 508.

(c) *Ante*, pl. 500.

(d) *Ante*, pl. 502.

General declarations, or the answer of a parent in chancery, are good evidence, after the death of such parent, to prove that a child was born before marriage; but not to prove that a child born in wedlock, is a bastard.

But see the case of *Rex v. Bramley*, post, pl. 507. that parents are good witnesses to prove the legitimacy or illegitimacy of their children.

of the mother of the lessor of the plaintiff to a bill in the Court of Chancery by the committee of A., a lunatic, the person last seized, against the lessor of the plaintiff and his mother; in which answer, the mother declared him to be illegitimate; that he was born before marriage, and privately baptized; and again publicly baptized after the marriage; which evidence Mr. Baron Eyre was also of opinion to reject; whereupon a verdict passed for the plaintiff, subject to the opinion of the Court upon these points of evidence. — LORD MANSFIELD. The whole of this evidence has been rejected. If any part of it ought to have been received that is material, there ought to be a new trial; and there can be no doubt of its being material. This case has been argued at the bar with greater latitude than I thought it could have been. Two questions have been made; 1st, Whether the father and mother could have been examined, if alive? 2dly, If they could, whether their declarations, though ever so solemn, can be admitted as evidence after their death? In this case there is no evidence of the time of the birth. The register only proves the christening; but *non constat* from thence, when the child was born. As to the first question, I should as soon have expected to hear it disputed, whether the attesting witnesses to a bond could be admitted to prove the bond. I have known it done over and over again, and it is much too clear to admit of a doubt. In this Court, at *nisi prius*, a mother was allowed to prove a clandestine marriage at the *Fleet*, and no other evidence was given to show the legitimacy of the child. A great estate was recovered upon her single testimony, and no objection whatever started as to the admissibility of it. In Lord *Valentia's* case, in the House of Lords (a), where the question was, Whether the Earl of *Anglesea* was married to the Countess Dowager of *Anglesea* on the 15th September 1741, prior to the birth of Lord *Valentia* their son, who was born in the year 1744? the Countess Dowager, having no interest, was admitted as a witness to prove the fact of the marriage. In *Stapylton v. Stapylton* (b), upon an issue to try whether the plaintiff was legitimate or not, the mother attended at *Guildhall* to prove that he was illegitimate. But it happened, that she had made an affidavit, in which she had sworn, that she and her husband had married long before the plaintiff was born; and this affidavit was intended to be used against her. Upon this fact being known, it was thought prudent not to call her; but there was not an idea on either side, that she was not a proper witness to the fact of the marriage. As to the time of the birth, the father and mother are the most proper witnesses to prove it. But it is a rule founded in decency, morality, and policy, that they shall not be permitted to say, after marriage, that they have had no connection, and therefore that the offspring is spurious; more especially the mother, who is the offending party. That part was solemnly determined at the delegates. But the question of access or non-access is totally different from giving evidence of the time of the birth. The next question is, Whether the declarations of the father and mother in their life-time can be admitted in evidence after their death? Tradition is sufficient in point of pedigree: circumstances may be proved. For instance: Suppose from the hour of one child's birth to the death of its parent, it had always been treated as

(a) Adjudged April 23d, 1771.

(b) About the year 1739.
Vide 1 Atk. 4.

illegitimate, and another introduced and considered as the heir of the family; that would be good evidence. An entry in a father's family Bible, an inscription on a tombstone, a pedigree hung up in the family mansion (as the Duke of *Buckingham's* was); are all good evidence. So the declaration of parents in their life-time. I have known advice given to a father and mother to make attested declarations in writing under their hand of the precise time of the birth of the bastard *eigne* and the subsequent marriage, to prevent controversy in the family touching the inheritance. If the credit of such declarations is impeached, it must be left to the jury to judge of. As to the declaration made by the mother of the present plaintiff in her answer to the bill filed against her in the Court of Chancery, it is not like offering a deposition or an answer in evidence against a person not a party to the original suit. That cannot be done for this reason; because such person has it not in his power to cross examine. But here the answer is offered only as evidence under her hand, of her having made such declaration. Therefore, I am of opinion, that as part of the evidence, which was material in this case, and which ought to have been admitted, was rejected, there must be a new trial. — *ASTON J.* I am of the same opinion. I think rejecting the general declarations of the father and mother was wrong; and here the declarations are not inconsistent with the register, but are rather strengthened by it; for if the child was born after the marriage, the mother did not go above eight months. — *WILLES J.* I am of the same opinion.

506. *Thompson v. Saul* (a), *T. T.* 31 G. 3. 4 *T. R.* 356. — The lessor of the plaintiff made out his title to the premises in question as heir at law to *J. T.*, the person last seised, being the nephew of his paternal grandmother. In answer to this the defendants, who were the tenants on the estate, set up the title of *J. T. H.*, as being the great-grandson of *E. T.*, a sister of the paternal grandfather of the said *J. T.*, in whom the estate vested by purchase, under a devise, having been originally derived from the said *E.*'s father, *R. T.*, and consequently that *H.* had the superior title. The question, therefore, turned upon the evidence by which he deduced his legitimate descent from *E.* As to which, the defendants did not prove any marriage, in fact, between her and *J. H.*, the great-grandfather of *J. T. H.*; but they produced a pedigree found in the late *J. T.*'s house, from whence it appeared that *J. H.*, the great-grandfather, and the said *E.* had had issue *J. H.*, through whom the said *J. T. H.* derived title; and further, that *R. T.*, the father of the said *E.*, in his will dated 6th of *November* 1714, called her his daughter *E. H.*; and several other family wills described the *H.*'s as cousins. Some expressions of the late *J. T.* were also proved, acknowledging *J. T. H.* as his heir at law; but it appeared that these, as well as the pedigree above mentioned, took their rise from the passage in old *R. T.*'s will, wherein he called his daughter *E.* by the name of *E. H.*; and besides there were similar expressions of acknowledgment from the late *J. T.* as to the heirship of the lessor of the plaintiff. To counteract this evidence the lessor of the plaintiff proved the marriage of *E.* in 1705, by her maiden name of *T.*, with one *S. K.*, with whom she lived in *N.* for some time, without having any children; that *K.* then left *N.*, after which time she and *H.* lived publicly together

The child of a married woman may be proved bastard by other evidence than that of the husband's non-access.

(a) See *Rex v. Luffe*, post, pl. 506.

as man and wife for some years, during which time that son was born who was stated in the pedigree to be the issue of E. and J. H.; and who, it was proved, had always been considered in the family as a bastard. Where the husband was during that time did not clearly appear; but a very old witness said that he went to L., where it was supposed he remained; and that he returned to N. after his wife's death. It was further proved that J. H., the son, mentioned in the pedigree, always went by that name, except in one instance, where he sold an estate after his mother's death, which had been devised to her by her father R. T., and in the title-deeds styled himself "*J. K., otherwise H.*:" and his descendants always went by the name of H. And it was also proved that E. was buried by the name of K. The fact of her marriage with K. being thus clearly established, the defendant's counsel then changed their ground, and contended for the right of J. T. H., as having descended from that marriage, for that unless non-access of the husband were clearly proved, which had not been nor could be done at this distance of time, it must be taken that J. the son, whatever his reasons might have been for taking the name of H., must, in point of law, be taken to be the son of K., and could not be bastardized by mere evidence, that another person had cohabited with his mother, from whom he claimed; and the learned judge directed the jury to that effect, telling them that though it was not absolutely necessary to prove the husband out of the realm in order to bastardize the issue, yet it was incumbent on the party insisting upon that fact to prove that the husband could not, by any probability, have had access to his wife at the time; which he conceived had not been shown in the present instance; whereupon the jury found a verdict for the defendants. — ASHHURST J., who, after consultation with the rest of the Court, said, that he was of opinion that there ought to be a new trial. He added, that he was convinced he had laid too much stress on the necessity of proving non-access, when the husband was within the realm, by witnesses who could prove him constantly resident at a distance from his wife. That the husband in this case left the wife, and went to reside at another place, as it was believed in L., and that there was no direct evidence of his access, he observed was very clear; and then there were other circumstances which went strongly to rebut the presumption of access, and to show that the son was a bastard; among others a very forcible one occurred, that of the son's having taken a different name from his birth, the name of the person with whom his mother was living at the time, which had been retained by him and his descendants ever since: that was a very strong family recognition of his illegitimacy. — PER CURIAM: Rule absolute for a new trial without costs.

The reputed mother is a competent witness to prove the illegitimacy of her children.

507. *Rex v. Bramley*, T. T. 35 G. 3. 6 T. R. 330. — Two justices by an order removed S. W., widow of J. W. deceased, and her three children, from L. to B.; against this order the latter parish appealed. On the hearing of the appeal the respondents produced evidence of the settlement of J. W. being at B.; and in order to prove the marriage of the said J. W. with the said S. W., they produced witnesses who proved that they had cohabited and lived together as man and wife, and were reputed to be man and wife until the death of J. W. The appellants offered to produce S. W. as a witness, to prove that she never was married, or that if

she ever was, the ceremony took place in *Ireland* under such circumstances as (the appellants contended) by the laws of *Ireland* rendered it wholly void. The appellants also offered witnesses to prove declarations made both by *J. W.* and *S. W.*, at different times, that they never were married. The respondents' counsel insisted that the evidence offered by the appellants was inadmissible; and the Court being of that opinion, rejected the same and confirmed the order of the justices, subject to the opinion of this Court, Whether the evidence offered by the appellants was admissible or not? — LORD KENYON C. J. This evidence was certainly admissible, though the justices at the Sessions were to judge of the effect of it. In the case of *Rex v. St. Peter's* (a), it was expressly held that the supposed husband was a competent witness to disprove the marriage. There are also many other cases in which it has been decided that the parents may be called as witnesses with respect to the legitimacy of their issue; and if they may be called to prove that they are legitimate children, there is no reason why they should be considered as incompetent when called to prove that the children are illegitimate. But in all these cases such testimony is open to great observation. — THE COURT sent the case back to the Sessions.

(a) *Ante*, pl. 499.

508. *Rex v. Luffe*, *H. T.* 47 G. 3. 8 East, 193. — An order of bastardy returned into this court by *certiorari* was as follows: *S* to wit. — The order of *S. K.* and *J. H.*, two of His Majesty's justices of the peace, &c. made the 20th of August 1806, concerning a male bastard child, lately born in the parish of *B.* (in the said county), on the body of *M. T.*, wife of *J. T.*, late of *B.* aforesaid, mariner. Whereas it appeareth unto us, the said justices, upon the oath of the said *M. T.* as otherwise, that her husband hath been beyond the seas, and that she did not see her said husband or had access to him from the 9th of April 1804, until the 29th of June last past: and whereas it hath also appeared unto us, the said justices, as well upon the complaint of the churchwardens, &c. of *B.*, as upon the oath of the said *M. T.*, that she, the said *M. T.*, on or about the 13th of July now last past, was delivered of a male bastard child in the said parish of *B.*, and that the said bastard child is likely to become chargeable to the said parish of *B.*: and further, that *H. L.* of *B.*, &c. did beget the said bastard child on the body of her, the said *M. T.*: and whereas the said *H. L.* hath this day appeared before us, but hath not shown any cause why he should not be adjudged the reputed father of the said bastard child: We therefore, upon examination of the cause and circumstances of the premises, as well upon the oath of the said *M. T.*, as otherwise, do hereby adjudge him, the said *H. L.*, to be the reputed father of the said bastard child; and do also adjudge that the said bastard child was born in the said parish of *B.* And thereupon we do order, as well for the better relief of the said parish of *B.*, as for the sustentation and relief of the said bastard child, that the said *H. L.* shall forthwith, upon notice of this our order, pay to the said churchwardens, &c. of the said parish of *B.* 2*l.* 3*s.* 6*d.* for and towards the lying-in of the said *M. T.*, and the maintenance of the said bastard child, to the time of making this our order. And we do also hereby further order that that the said *H. L.* shall likewise pay to the churchwardens, &c. of the parish of *B.* for the time being, 3*s.* weekly, &c. for the main-

1. An order of bastardy stated to be made upon the oath of the wife, as otherwise, is good; for it will be presumed that the non-access of the husband was proved by competent witnesses on oath other than the wife; or if proved by her also, that the judgment of the justices was founded on the other proof.

2. Such an order filiating the child of a married woman is good, though it only state that such child was likely to become chargeable, which are the words of the stat. 6 G. 3. c. 31. § 1. as applied to the bastards of single women: for upon that statute, as well as the stat. 18 Eliz. c. 3.

which has the words *born out of lawful matrimony*, the only question is, Whether the child be by law a bastard?

3. Non-access of the husband need not be proved during the whole period of the wife's pregnancy: it is sufficient if the circumstances of the case show a natural impossibility that the husband could be the father; as where he had access only a fortnight before the birth.

tenance, &c. of the said bastard child, so long time as the said bastard child shall be chargeable to the said parish of B. And we do further order that the said M. T. shall also pay, or cause to be paid, to the said churchwardens, &c. of the said parish of B. for the time being, 1s. 6d. weekly, so long as the said bastard child shall be chargeable to the said parish of B., in case she should not nurse and take care of the said child herself. (Signed and sealed by the justices.) The defendant appealed against the order to the Quarter Sessions, by which court it was confirmed. Three objections were taken to this order (a); First, That the wife was admitted to prove the non-access of her husband. Secondly, That this being the child of a married woman, the justices had no jurisdiction to make an order of filiation, unless the child appeared to have been actually chargeable, and not merely likely to become so. Thirdly, That the non-access of the husband was not proved during the whole time of the wife's pregnancy: which was necessary to bastardize the issue. — STOKES showed cause against the rule for quashing the order. As to the first objection: the non-access of the husband does not rest upon the evidence of the wife alone; nor does it even necessarily appear that she gave any evidence of that fact. The words of the order are that it appeared to the justices, *upon the oath of the said M. T.; as otherwise*, (by which must be understood other legal proof) that her husband had been *beyond sea*, and that she had not seen him, or had access to him, &c. And the words *as otherwise* occur again in the subsequent part of the order. It was long ago decided, in *Pendrell v. Pendrell* (b), and *Rex v. Bedall* (c), that non-access may be proved to bastardize the issue, though the husband be in England; and the old doctrine of the *quatuor maria* (d) was agreed to be exploded. And in the latter case, the order being stated to be made "on the examination of the wife, and on other proof," it was holden to be good; though it was agreed that the evidence of the wife alone to prove non-access would not have been sufficient, according to the case of *Rex v. Reading*; but that she was a witness from necessity to prove the criminal conversation. It appears by the report of *Rex v. Reading* (e), that the wife was the only witness to prove the non-access, as well as the criminal intercourse; and Lord Hardwicke said, "it would be of dangerous consequence to lay it down in general that a wife should be a sufficient sole evidence to bastardize her child, and to discharge her husband of the burthen of its maintenance." Upon the authority of that case, the order was quashed in *Rex v. Rooke* (g); it having been made upon the sole evidence of the wife as to the non-access. Both those cases, therefore, are distinguishable from the present.

(a) The presence of the defendant in court was waived by consent. Vide *Rex v. Mathews*, Salk. 475.

(b) *Ante*, pl. 497.

(c) *Ante*, pl. 502.

(d) Vide Co. Litt. 244. a. and 193. b. to 124. 129., in which the whole doctrine is discussed in the notes.

(e) Rep. Temp. Hardw. 79. *Ante*, pl. 500. 3 Sess. Cas. 175., and Andr. 20. Ford's MS. states the facts thus, "John Alman was husband of Mary

"Alman, and leaving her upon the 25th of May 1731, had no access to her from that time till the 25th of May 1733, upon which day she was delivered of a bastard child begotten by the defendant Reading; all which was proved by the evidence of Mary Alman. There were other witnesses who proved that the husband was without seven miles of his wife during that time."

(g) 1 Wilt. 340. *ante*, pl. 504.

The second objection is grounded on this, that the stat. 6 G. 2. c. 31. § 1. which gives jurisdiction to magistrates to take examinations for making orders of filiation in case of bastards *likely to become* chargeable, is confined in terms to the bastards of *single women*. But this order would at any rate be good on the general statute of the 18 Eliz. c. 3., which gives the magistrates jurisdiction to filiate bastards "*begotten and born out of lawful matrimony*." And it was determined in *Rex v. Alberton* (a), that a bastard begotten on the body of a *feme covert*, while her husband was beyond the four seas, was "*begotten and born out of lawful matrimony*." And in *Rex v. Taylor* (b), the mother of a bastard was after her marriage holden to be still liable to be committed for disobedience to an order of maintenance made under the statute of *Elizabeth*. According to *Rex v. Mathews* (c), and an anonymous case in 10 Mod. 84. it is not even necessary to state in the order that the bastard child is likely to become chargeable; for that, say the Court, will be presumed. And in *Rex v. Nelson* (d), though it was agreed, that it ought to appear by the order that the child was likely to be chargeable; yet that, it was said, sufficiently appeared by the order to pay such charges as the parish had been at. As to the third objection, that the child was born after access of the husband, the birth of the child was on the 13th of July 1806, and the fact of non-access stands proved from the 9th of April 1804, until the 29th of June 1806: the access, therefore, of the husband was not till within about a fortnight before the birth; which renders it impossible, in the course of nature, that he could have been the father. In support of this objection were cited at the time *Regina v. Murray* (e), and *Rex v. Alberton* (g), to show that non-access must be proved during the whole time of pregnancy, in order to bastardize the issue. But those cases were decided upon the ground of the old rule of the *quatuor maris*, now exploded by the subsequent case of *St. Andrew's v. St. Bride's* (h), *Pendrell v. Pendrell* (i), *Rex v. Lubbenham* (k), and *Goodright v. Saul*. (l) Besides, the Court will presume every thing in favour of an order: and where it is apparent from the facts stated, that the defendant is the father of the child, they will not, by quashing the order, make the husband liable to maintain it. — WILSON, ALDERSON, and KING, *contra*. As to the first objection, it has been clearly settled since *Rex v. Reading*, that the wife is not a competent witness to prove the non-access of her husband, though from the necessity of the case she is admitted to prove the act of adultery. And it is no answer to say, that she was not the *sole* witness, that the fact of non-access may have been proved by other evidence, by reason that the order is stated to have been made upon her examination upon oath, *as otherwise*: for it expressly appears that the non-access was proved by her: and though it were also testified by other evidence, (which other evidence, however, does not necessarily appear to have been upon oath), yet the judgment of the magistrates, which must be taken to have been formed upon all the evidence taken together, cannot be sustained if part of that evidence were incompetent to be received; for the Court cannot tell what degree of weight was given to her testimony as to the fact of non-access in coming to the conclusion. The second objection was only argued by some of the defendant's counsel, on the words, "*born out of lawful*"

(a) *Ante*, pl. 491.

(b) 3 Burr. 1679.

(c) 2 Salk. 475.

(d) 1 Ventr. 37.

(e) *Ante*, pl. 491.

(g) 1 Lord Ray. 395.

(h) *Ante*, pl. 494.(i) *Ante*, pl. 497.

(k) 4 T. R. 251.

(l) *Ante*, pl. 506.

"matrimony," in the statute of *Elizabeth*, and the words "single woman," used in the statute 6 G. 2. neither of which, they said, applied to the illegitimate child of a married woman. But this objection, being discountenanced by the Court for the reasons after stated, was ultimately abandoned. Thirdly, The law presumes access, and the proof of non-access must come from the party disputing the legitimacy. The mode of proof was formerly very plain and precise; for unless the husband were proved to be beyond the four seas, or labouring under some personal disability, the children were deemed legitimate. — If, says Lord Coke (a), "the issue be born within a month, or a day after marriage, between parties of full lawful age, the child is legitimate." The law, therefore, never looked to the period of conception, or to the actual possibility of the husband having begotten the child, but only to the notorious fact of its birth during the marriage, and while the husband was within the four seas. (b) The doctrine indeed, of the *extra quatuor maria*, is now obsolete; and is supplied by the positive proof of non-access, though the husband be in *England*: but so much of the old rule of law still holds, that if access be proved at any time between the possible conception and the birth, the child is legitimate. So 1 *Blac. Com.* 457. speaking of the old doctrine; "If the husband be out of *England* (or, as the law somewhat loosely phrases it, *extra quatuor maria*) for above nine months, so that no access to his wife can be presumed; her issue during that period shall be bastards. But generally (he adds, with reference to the later determinations engrafted on the old rule,) during the coverture, access of the husband shall be presumed, unless the contrary can be shown; which is such a negative as can only be proved by showing him to be elsewhere." — [ELLENBOROUGH C. J. Suppose a husband, who had been out of reach of access during the whole period of the wife's possible gestation, returned to his wife the very instant before her actual delivery, can it be contended that the child would in such case be legitimate? The ground insisted upon in the case of *Regina v. Murray*, was a little slurred by Lee J., in *Rex v. Reading*. If you once get at the fact, that it is naturally impossible, (I do not say *improbable* merely) that the husband should be the father of the child, the conclusion follows that the child is a bastard. There is a very early case of *Foxcroft* in the time of Ed. 1. (c),

(a) Co. Litt. 244. a.

(b) Many cases were referred to, which are collected in 4 Vin. Abr. 21. Letter B. pl. 3, 4, 5, and 6.

(c) E. 10 Ed. 1. B. Rot. 23. 1 Rol. Abr. 359. It is to be observed, however, that as the case is stated in Rolle, R. the infirm bedridden man, was married to A. by the bishop of London privately, in no church or chapel, nor with the celebration of any mass, "le dit A. Esteant adonque pregnant del dit R." &c. Now if by the word *del* it be meant that A. was pregnant by the man whom she afterwards married (and the words are so construed in other abridgments), assuming that there was

a marriage, the case is scarcely intelligible; for it is contrary to the whole current decisions to say that a child born after the marriage of its actual parents, though begotten before, is a bastard; and if R. were in truth the father of the child begotten some time before, it was a matter of no consequence how infirm of body he was at the time of his marriage, only twelve weeks before the birth; and yet stress is evidently laid upon this circumstance in the statement of the case. But if, by the mention of the privacy of the marriage, and that it was in no church, &c. it were meant to question its validity for want of a proper ceremonial, the infirmity of the

where an infirm bedridden man was privately married to a woman, who, within 12 weeks after, was delivered of a son; and the issue was adjudged a bastard. The principle to be deduced from the cases is, that if the husband could not by possibility be the father, that is sufficient to repel the legal presumption of the child's legitimacy. But if the mere fact of access of the husband at any time between the moments of conception and delivery would make the child legitimate, it would have been an answer to many of the cases where legitimacy has been in question.] No other certain time can be drawn than that laid down in *Regina v. Murray* (a), and *Rex v. Alberton*. (b) In the latter case it is said, "He is a bastard who is born of a man's wife while the husband, at and from the time of the begetting to the birth, is extra quatuor maria;" or as it is now understood, is proved to have had no access during that period. And in the report of the same case in *Carthew*, the third exception to the order on which it was quashed was, that it was not alleged that the husband was beyond sea for 40 weeks before the birth of the child; and that it would not be sufficient to say that he was beyond sea at the time of the conception: because that in nature could not certainly be known.—[LORD ELLENBOROUGH C. J. Here, however, in nature the fact may certainly be known, that the husband, who had no access till within a fortnight of his wife's delivery, could not be the actual father of the child. Where the thing cannot certainly be known, we must call in aid such probable evidence as can be resorted to, and the intervention of a jury must, in all cases in which it is practicable, be had to decide thereupon: but where the question arises, as it does here, and where it may certainly be known from the invariable course of nature, as in this case it may, that no birth could be occasioned and produced within those limits of time, we may venture to lay down the rule plainly and broadly, without any danger arising from the precedent.] The same case of *Rex v. Alberton* is reported in *5 Modern*, 419. (c), and there *Holt* C. J. is made to say,

man's body at the time was equally immaterial; and the case itself not worth noticing, as amounting only to this, that the issue of persons not married according to the requisite ceremonies of the law, or, in other words, not married at all, are bastards. And if Lord Rolle had considered that to be the point in judgment, it is singular that he should not have drawn attention to it by some more appropriate turn of expression, than by saying that R. was married privately, &c. in conjunction with the other circumstances of the case. *Quære*, then, whether there may not be some error of the pen, or of the press? For though the relative word *dit* supports the allusion to the husband R.; there being but one R. before mentioned; yet in abstracting the record, as it is likely enough that the son was the same name with the supposed father, this error may have crept in without attracting attention. On the other hand, the word *del* properly signifies *of*, and *preg-*

nant del, &c. is *pregnant of*, &c. and not *by*, &c. And this is countenanced by the expressions used by Lord Rolle in other places under the same head, where speaking of pregnancy, &c. the phrases used in relation to the husband or father are "enseint per A." "ad issue per luy;" "ad issue per B." while the word *del* is plainly used in its common sense for *of*, in several sentences immediately preceding. And in this sense only, speaking of the woman as *pregnant of R. the issue*, is the case intelligible, or likely to have been noted in that place or manner. And in this sense Lord Ellenborough seems to have read the case. There is no regular year-book of this period to refer to, but a few scattered notes, not including this case.

(a) Salk. 122.

(b) 1 Lord Ray. 395. Salk. 484. Carth. 469.

(c) Under the name of Allanson v. Spence.

that it must appear that the husband was not here all the space; for if he were here either at the begetting or at the birth of the child, it is sufficient. And this falls in with the established rule of law, which has never been questioned, that if a man marry a pregnant woman any time before the birth of the child, such child is legitimate. — Then by analogy to that, if the husband have access any time before the birth of the child, the same construction must prevail. — LORD ELLENBOROUGH C. J. Three exceptions have been taken to this order; First, That the wife was examined generally and alone to the fact of non-access, and that the order is founded on her evidence only; whereas it is laid down in the cases that an order of this sort cannot be made on the evidence of the wife alone, but that there must be other proof of the non-access. This objection is grounded upon a principle of public policy, which prohibits the wife from being examined against her husband in any matter affecting his interest or character, unless in cases of necessity, where, from the nature of the thing, no other witnesses can probably have been present; but exceptions of that sort have been established: and that it is necessary, and on that account allowable, to examine her as to the fact of her criminal intercourse with another has been held by various judges at different periods; for this is a fact which must probably be within her own knowledge and that of the adulterer only. And by a parity of reasoning it should seem that if she be admitted as a witness of necessity to speak to the fact of the adulterous intercourse, it might also perhaps be competent for her to prove that the adulterer alone had that sort of intercourse with her, by which a child might be produced within the limits of time which nature allows for parturition. Certainly, however, it is competent for her to prove the fact of her connection with that person whom she charges as being the real father of her child. And here the order is stated to have been made, not on her evidence only, but “upon the oath of the said *Mary Taylor, as otherwise:*” it is true that it is not said, “as otherwise upon oath;” but as no evidence can properly be given otherwise than upon oath, it is not going further in making an intendment to support this order than has been done in other cases, to say that such other evidence must also be taken to have been given upon oath. Now it does not appear to what particular facts the wife deposed, or what were proved by the other evidence; and then the rule laid down in *Rex v. Bedall* applies, that if there were other witnesses besides the wife, and she were competent to prove any part of the case, the Court will intend, in support of an order framed like the present, that she was examined only as to those facts which she was competent to prove, and that the rest of the case was proved by the other evidence. And this is not more than has been intended in many other cases. We may, therefore, read the adjudicatory part of the order as made “upon examination, &c. of the premises upon oath, as well of the said *M. T., as otherwise.*” The second exception, which arose on the wording of the statute of *Eliz. and G. 2.* in effect resolves itself into the third. For when the question is, whether this were a child *born out of lawful matrimony*, that is, out of the limits and rights belonging to that state, it is the same in substance as the question whether it be a *bastard*. It is so for the general purposes of the act. The matrimony does not cover the child if

is be in *other* respects (according to the rule of law applicable to this subject) a bastard. And so it seems that a child born by adulterous intercourse, is as much within the provision of the act of G. 2. as one which is born of a single woman. The cases of *Rex v. Reading*, and *Rex v. Bedall*, were both after the statute of G. 2. and yet no such objection was taken. It is a consequence which follows of course from establishing the *bastardy* of the child that it was born out of *lawful matrimony*, in the proper sense of those words as applied to the subject-matter. This brings it to the third and principal exception, that as it appears that the husband returned within access of the wife about a fortnight before the child was born, he must be presumed to be the father of it, which will throw upon him the burthen of its maintenance. As something has been said concerning the novelty of the doctrine admitting the proof of non-access of the husband living within the kingdom, in order to rebut the presumption of legitimacy, let us see how the law was understood to be in early periods. In 1 *Roll. Abr.* 358. tit. *Bastard*, letter *B.*, it is said, "By the law of the land no man can be a bastard who is born after marriage, *unless for special matter.*" Therefore in the very text of the rule an exception is introduced. The first special matter of exception mentioned by *Rollé* to bastardize the issue, where the husband is within the reach of access, is one of a natural impossibility, where the husband is within the age of puberty, though that was no obstacle to the marriage. There is a case in the year-book 1 *H. 6.* 3. b., which goes the length of deciding the issue to be a bastard, where the husband was within the age of 14. There are several other cases mentioned from the year-books, of course less questionable, as the age in those cases was much less. All these establish this principle, that where the husband in the course of nature could not have been the father of his wife's child, the child was by law a bastard. But *Foxcroft's* case, p. 359. of the same book, which I before mentioned, was the case of an infirm bedridden man, who having married in that state 12 weeks before the delivery of his wife, that was holden to bastardize the issue, though the parties were together. And no doubt is thrown on the principle of that case in any subsequent authority, not even in the learned editor's notes on *Co. Lit.* 244. a. 123. b. &c. This, therefore, is another instance of an exception to the general rule, admitted at so early a period as the 10 *Ed.* 1., and founded on natural impossibility arising from bodily infirmity. There is another case in the 18 *Ed.* 1., also mentioned in *Roll. Abr.* (p. 356.) still stronger to the present purpose; where the child was found to be born 11 days "post ultimum tempus legitimum mulieribus pariendi constitutum;" and because of that fact, "et quia per veredictum juratorum invenitur quod prædictus *Robertus* (the husband) non habuit accessum ad prædictam *Beatricem* per unum mense ante mortem suam per quod majis presumitur contra prædictum *Henricum* (the issue)," &c. therefore the brother and heir of *Robert* had judgment to recover in assize. Even at that time, therefore, it was considered that the fact of access or non-access was a material question to be gone into; and that the period of time which had elapsed between the non-access and the birth, which only goes to establish the natural impossibility of the husband being the father of the child, was proper to be inquired

(a) Bracton,
p. 6. a.

of. And Lord Rolle C. J., adds a note to that case, that the jury found that the husband *languished of a fever long before his death*, which shows that the natural impediment to any access, arising from his languishing of a fever some time before his death, was also considered as an ingredient in the question which was submitted to the jury. The rule of law which has prevailed in these cases is (a), "*Stabatur huic presumptioni donec probetur in contrarium, ut ecce, maritus probatur non concubuisse aliam quamdiu cum uxore, infirmitate vel alia causa impeditus, velerat in ea invaliditudine ut generare non possit.*" From all these authorities I think this conclusion may be drawn, that circumstances which show a natural impossibility that the husband could be the father of the child of which the wife is delivered, whether arising from his being under the age of puberty, or from his labouring under disability occasioned by natural infirmity, or from the length of time elapsed since his death, are grounds on which the illegitimacy of the child may be founded. And therefore, if we may resort at all to such impediments arising from the natural causes adverted to, we may adopt other causes equally potent and conducive to show the absolute physical impossibility of the husband's being the father. I will not say the improbability of his being such, (for upon the ground of improbability, however strong, I should not venture to proceed). No person, however, can raise a question, whether a fortnight's access of the husband, before the birth of a full-grown child, can constitute in the course of nature the actual relation of father and child. But it is said, that if we break through the rule insisted upon, that the non-access of the husband must continue the whole period between the possible conception and delivery, we shall be driven to nice questions. That, however, is not so; for the general presumption will prevail, except a case of plain natural impossibility is shown; and to establish as an exception a case of such extreme impossibility as the present cannot do any harm, or produce any uncertainty in the law on this subject. As to the case of *Regina v. Murray*, relied on for the position contended for, on which case alone *Rex v. Alberton* proceeded, the ground of it was discountenanced by Lee J., in *Rex v. Reading*. Without weakening, therefore, any established case, or any legal presumption, applicable to the subject, we may without hesitation say, that a child born under these circumstances is a bastard. With respect to the case where the parents have married so recently before the birth of the child that it could not have been begotten in wedlock, it stands upon its own peculiar ground. The marriage of the parties is the criterion adopted by the law, in cases of ante-nuptial generation, for ascertaining the actual parentage of the child. For this purpose it will not examine when the gestation began, looking only to the recognition of it by the husband in the subsequent act of marriage. — GROSE J. As to the 1st and 2d objections which have been made, I shall content myself with referring to the answers given to them by my Lord. But in respect to the third objection, as we have been warned not to break in upon the common law, without some rule to go by, I shall make a few observations upon it. It is said, that if we break in upon the old rule of the *quatuor maria*, we must adopt some other line, which will be difficult to be drawn. But that rule has been long exploded on account of its absolute nonsense; and we will

adopt another line, which has been marked out on account of its good sense. In every case we will take care, before we bastardize the issue of a married woman, that it shall be proved that there was no such access as could enable the husband to be the father of the child. If by reason of imbecility, or any personal account, or from absence from the place where the wife was, the husband could not be the father of the child, there is no reason why it should not be so declared. Here it is apparent that the husband, who had no access to the wife till two weeks before her delivery, could not be the father. And in saying so, we go upon the sure ground of natural impossibility and good sense; rejecting a rule founded in nonsense. — LAWRENCE J. The objections are reduced to two. The first is, that this order is made upon the evidence of a married woman that her husband had no access to her: And *Rex v. Reading*, and *Rex v. Rooke*, have been relied on. But those cases are not broken in upon by sustaining the present order, because it was made on other evidence besides that of the wife. It is stated to have been made on examination of the wife on oath, *as otherwise*; by which I understand on other legal proof besides her evidence. But it is said that we can make no intendment in support of this, which is more in the nature of a conviction for an offence than of an order. That however is not so, and is contrary to the determination in *Rex v. Bedall*, between which and the present case there is no distinction, except that there the order was stated to be made "upon examination of the wife and other proof upon oath;" the only question therefore is, Whether the words "*as otherwise*," here used, must not be taken to mean, *other proof upon oath*? for, if they can, the cases are parallel. Though, if orders can be made in any cases without oath, which I do not know that they can, still this would be good as an order. But suppose it had been stated in express terms, that the wife had given evidence of the non-access, and that the same fact had been proved by 10 other witnesses, we should presume in the case of an order that the magistrates had proceeded upon the evidence of the other witnesses as to that fact. This case comes to us after an appeal to the Sessions, and we may presume that if there had been no other evidence of non-access than that of the wife, the Sessions would not have confirmed the order. Then the third question is, Whether, as the husband had no access until about a fortnight before the birth, a child so born can be said by our law to be legitimate? Now without going over the whole ground of the argument again, the doctrine of the *quatuor maria* has been long exploded; and it has been shown by the authorities mentioned by my Lord, that imbecility from age, and natural infirmity from other causes, have always been deemed sufficient to bastardize the issue; all which evidence proceeds upon the ground of a natural impossibility that the husband should be the father of the child: then why not give effect to any other matter which proves the same natural impossibility? It is said, however, that in so doing we shall shake a settled rule of law, that if a child be born in wedlock, though but a week before the marriage of its parents, such child is to be deemed legitimate. But I do not see that the consequence supposed would follow. By the civil law, if the parents married any time before the birth of the child, it was legitimate: and our law so far adopts the same rule, that if a man

marry a woman who is with child, it raises a presumption that it is his own. — *Lord Rolle* gives some such reason for the rule; and it seems to be founded in good sense: for where a man marries a woman whom he knows to be in this situation, he may be considered as acknowledging by a most solemn act that the child is his. — *LE BLANC J.* As to the first objection, I think it must be taken that the wife was examined to prove the fact of the non-access of her husband within the time mentioned, as well as the other witnesses; for the particular facts proved by her and other witnesses, or by her alone, are given in detached sentences. And then the question is brought to this, Whether an order of filiation, where the wife and other witnesses were examined to prove the non-access of the husband, can be supported? To that the case of *Rex v. Bedall* is in point: for there the wife, as well as other witnesses, were examined to prove that fact, (which I think appears as plainly here from the statement of the case), and yet the order was holden to be good. I consider that case, therefore, as an authority to this point. And it is more peculiarly fit to make the intendment, that the fact was proved by the other witnesses as well as by the wife, in a case like the present, where an appeal lies to the Sessions from the original order of the justices, where the appeal has been heard, and where the objection might have been taken on the evidence that no other than the wife had proved the non-access, and where, notwithstanding it is stated that that fact, amongst others, was proved by the wife *as otherwise*; understanding, as I do, these latter words to mean other competent proof. The second objection has been properly abandoned; because it comes in effect to this question, Whether a child proved to be a bastard be not the same for the purpose of these acts of parliament, as a child *born out of matrimony*, or born of a *single woman*? To be sure, they must be considered as the same thing. As to the third objection, the question will be, Whether the child of a woman, whose husband is proved to have had no access to her till a fortnight before her delivery, can in law be considered as illegitimate? And our attention has been called to cases where a child born within a short time after the marriage of the parents is, by the rule of law, considered to be legitimate. That is a rule of law not to be broken in upon, except as in other cases, one of which has been mentioned, by proof of natural imbecility, which showed that the husband could not have been the father of the child. But in order to make the cases the same, it must be supposed that the adultery of the wife in the absence of her husband, who only returns to her just before her delivery, is assimilated in law to the case of a man's marriage with a pregnant woman recently before the birth of the child, where the very act of marriage in such a situation is an acknowledgment by him that he is the father of the child with which the woman is pregnant. But there is no analogy between the two cases. It comes then to a case of non-access for a year and a half, excepting the last 14 days before delivery. The rule of law was formerly very strict in favour of the legitimacy of children born of a married woman whose husband was within the four seas; but that has been long broken in upon. Afterwards, the rule was brought to this, that where there was an impossibility that the husband could have had access to his wife, and have been the father of the child, there it should be deemed

illegitimate: And in *Goodright v. Saul* (a), the Court held that there was no necessity to prove the impossibility of access, if the other circumstances of the case went strongly to rebut the presumption of access. The cases of *Regina v. Murray* and *Rex v. Alberton*, were rather cited for the sake of expressions thrown out by some of the judges in giving their opinions, than for the determination of the Court: for the points in judgment did not require the support of the doctrine advanced, that there must be non-access during the whole period of the wife's pregnancy in order to bastardize the issue. But where it can be demonstrated to be absolutely impossible, in the course of nature, that the husband could be the father of the child, it does not break in upon the reason of the current of authorities, to say that the issue is illegitimate. If it do not appear but what he might have been the father, the presumption of law still holds in favour of the legitimacy; but if, as in this case, it be proved to be impossible that he should have been the father, then, within the principle of the modern cases, there is nothing to prevent us from coming to that conclusion. — Order confirmed.

509. *Rex v. Twynning*, H. T. 49 G. 3. 2 B. & A. 386. — Removal of *M. B.* wife of *F. B.* and her two children, from *M.* to *T.* Order confirmed, subject, &c. — About seven years ago, the pauper, *M. B.*, intermarried with one *R. W.*, who soon went abroad and has not been since heard of. In a little more than 12 months after his departure, she being then settled in *T.*, intermarried with *F. B.*, with whom she has cohabited from the time of such marriage to the present period, and by whom she had the two children mentioned in the order, one born in *Tewkesbury*, and the other in *W.* On the part of the appellants it was contended, that the respondents ought further to have proved the death of *R. W.*, prior to the marriage with *F. B.*, and that in the absence of such proof, the presumption of law was, that he was then alive, and that consequently the children must be considered as illegitimate, and therefore the order as to them ought to be set aside. The Sessions thought the burthen of proof lay upon the appellants to show that *R. W.* was alive at the time of the second order. The cases of *Williams v. The East India Company*. (b) *Doe v. Jesson*. (c) *Hopewell v. De Pinna*. (d) *Rex v. Hawkins* (e), and *Wilson v. Hodges* (g), were cited. — BAYLEY J. It is not necessary for the Court in this case to impugn the authority of the cases which have been cited, nor to vary the ordinary presumption which exists both in civil and criminal cases; for this is a case of conflicting presumptions, and the question is, which is to prevail. The law presumes the continuation of life, but it also presumes against the commission of crimes, and that even in civil cases, until the contrary be proved. The case of *Williams v. The East India Company* decided that the *onus probandi* lay in such cases on the opposite side. For there, in an ordinary case, it would have been the duty of the defendants to have proved the notice; but the Court held, that inasmuch as the delivery of the combustible matter without notice, would have been a crime in the party delivering it, it became necessary for the plaintiff to prove that no such notice had been given. And in *Rex v. Hawkins*, where the objection was, that the defendant had not taken the sacrament within the year, and it was said in answer, *non constat*

The law always presumes against the commission of crimes, and therefore, where a woman twelve months after her first husband was last heard of, married a second husband, and had children by him; held, on appeal, that the Sessions did right in presuming *prima facie*, that the first husband was dead at the time of the second marriage, and that it was incumbent on the party objecting to the second marriage to give some proof that the first husband was then alive.

(b) 3 East, 192.

(c) 6 East, 80.

(d) 2 Campb. 113.

(e) 10 East, 211.

(g) 2 East, 312.

that the other party had not equally omitted to do so, the Court held, that the presumption was, that he had conformed to the law. The cases cited only show when the presumption of life ceases, even where there is no conflicting presumption. The facts of this case are, that there is a marriage of the pauper with *F. B.*, which is *primâ facie* valid; but the year before that took place, she was the wife of *R. W.*, and if he was alive at the time of the second marriage, it was illegal, and she was guilty of bigamy. But are we to presume that *W.* was then alive? If the pauper had been indicted for bigamy, it would clearly not be sufficient. In that case *W.* must have been proved to have been alive at the time of the second marriage. It is contended that his death ought to have been proved; but the answer is, that the presumption of law is, that he was not alive, when the consequence of his being so is, that another person has committed a criminal act. I think, therefore, that the Sessions decided right in holding the second marriage to have been valid, unless proof had been given that the first husband was alive at the time. — *BEST J.* I am also of opinion that the Sessions have decided correctly in this case. They had a right to presume that the pauper had not committed a crime, and if so, the second marriage would be valid, unless proof had been given of the first husband being then alive. The cases cited are very distinguishable; they only decide that seven years after a person has been last heard of, you are in all cases to presume his death. But they do not show, that where conflicting presumptions exist, you may not presume the death at an earlier period. Now, those conflicting presumptions exist here, and I think the Sessions were warranted in presuming the death of the first husband, on the ground that they would not presume that the woman had committed bigamy. I think, therefore, that their order was right. — Order of Sessions confirmed.

III. *The Duty and Authority of the Parish-officers. (a)*

The parish-officers where a bastard child is born must maintain it, except the birth in such parish was contrived by fraud; and in such case it shall be maintained by the parish where the mother resided, and from which she was so fraudulently sent.

510. *Twining v. Tewksbury, Gloucester Assizes, 8 Car. 1. 2 Buld. 349.* — A servant-maid dwelling in *Twining* was there got with child, and she being near the time of her delivery, by practice was conveyed out of the parish of *Twining* unto an outhouse, a hovel of one *E. B.*, an inhabitant in *Twining*, the which hovel was near *Twining*, but within the parish of *Tewksbury*, being the outermost confines of it, and there the child was born. The parish of *Twining* afterwards gave relief to the mother, and the minister of *Twining* christened the child. When the mother was able to remove, the parish of *Twining* received her and her child, and gave relief to her for two years. The mother afterwards falling sick, the parish of *Twining* sent her and her child to *L.*, in the county of *W.*, where the mother died. The parish of *L.* sent the child to *Twining*, and the overseers of *Twining* sent it, being under the age of three years, to *Tewksbury*, within which parish the child was born, and *Tewksbury* sent the child back again to *Twining*. The question was, Which of these two parishes were bound in law to provide for and maintain this bastard-child? — *SIR WILLIAM JONES J.* Legally and regularly, all bastard-children are to be kept by the parish where they are born, provided no practice be made

(a) See further, *post*, "Bond and Security."

use of to have the child there born; but if any such practice be proved, then this rule fails, and the child is to be kept and provided for by the parish where the mother dwelt, and where she was got with child; and which had used this practice to have the child born in another parish. — This practice being very apparent in the present case, the Court ordered that the child should be maintained by the parish of *Twining*.

511. *Richards v. Hodges*, T. T. 2 Car. 2. 2 Saund, 83. — R. and S. being churchwardens, brought an action against H., on his bond in the usual form to indemnify the parish in the case of a bastard-child. The defendant pleaded *non damnificatus*, generally. The plaintiffs replied, that neither the defendant, nor any other, for the space of one month after making of the bond, did provide any maintenance for the child; by reason whereof the parishioners, to prevent the said child's perishing by hunger and cold, were forced for all the time aforesaid to pay, and have paid, 4s. for the maintenance and nourishment of the said child. To which the defendant rejoined, that he would have nourished the said child at his proper costs and charges for all the time aforesaid, and offered so to do, as well to the plaintiffs as to other the parishioners; but they refused to permit him, and against the will of the defendant put the said child to nurse, and paid the said 4s.: upon which rejoinder, the plaintiffs demurred in law. — And by THE COURT, the rejoinder is not good, because it is a *departure* from the first plea in bar; for the defendant in his plea says, that the parishioners were not *damnified*: and when the plaintiffs by their replication show how they were *damnified*, there the defendant cannot rejoin that this *damnification* was of their own wrong, as here he hath done; but he ought to have pleaded that at first in his plea in the bar. And though it was urged for the defendant that this was no *damnification* at all, because it was the voluntary act of the parish to put the child to nurse when the defendant himself offered to maintain it, and that they ought not to take advantage of their own wrong, yet it was not allowed. For THE COURT held clearly, that the rejoinder was a *departure*; and for that reason it was adjudged for the plaintiffs.

512. *Shermanbury v. Bolney*, T. T. 5 W. & M. Carth. 279. — A poor man, who was lawfully settled in the parish of B., married a woman who was an inhabitant of the parish of S., who at that time had three children living, all under the age of *seven years*, and maintained by the parish of S. at the weekly allowance of 3s. After this marriage, the mother and her three children were sent to the parish of B., where her husband was settled. Hereupon the justices, upon the complaint of the parish-officers of B., made an order, that the parishioners of S. should continue to pay the 3s. per week towards the maintenance of the children; which order was confirmed upon an appeal. And being removed into B. R., it was now moved to quash it, because the justices had no power to make an order for such payment towards the maintenance of the children now they dwelt in another parish. — SED PER CURIAM: The marriage of the mother into the parish of B. shall not settle the children there, unless they were *nurse-children*, for such must go with the mother. But it was doubted, whether these children, being under seven years old, shall be reputed to be *nurse-children*. Then it was objected, that it did not appear in this case, but that

The parish-officers cannot insist upon maintaining a bastard child, if the putative father offers to provide for it.
S. C. 1 Mod. 43.
1 Sid. 444.
2 Keb. 612.

If the parish-officers bring an action on a bastardy bond, the defendant must plead that the *damnification* was of their own wrong.

The parish-officers cannot remove bastard children from the parish where they are maintained to the parish where their mother afterwards gains a settlement by marriage. — S. C. Comb. 208.

the father-in-law was of sufficient ability to maintain these children. — To which it was answered by G. EYRE J., that where the relations are obliged to maintain their poor friends, such poor people shall not be removed out of their own parish where they are settled, unto that parish where their relations live; for by that means, upon the death of such relations, the parish where they lived may become chargeable, which ought not to be, and therefore the poor person shall continue in his own parish, and his relations shall maintain him there. — *ET PER CURIAM*: This case is within the equity of the statute for the relief of the poor; and there is no reason that S. should be discharged of the children by their mother's marriage.

The putative father of a bastard child has a natural right to the care and education of it, and therefore it cannot be taken from his custody.

S. C. 2 Sir.
1162.

513. *Rea v. Cornfort*, H. T. 15 G. 2. MSS. — The defendant married a natural daughter of one B., who was but 15 years old; and the question was, Whether, as she was his natural daughter, this case was within the 4 & 5 P. & M. c. 8? It appeared he was a distant relation, went to her father's house upon a visit, and was entertained there, and made his addresses to the lady, but the encouragement in the affair first arose from her. An information was moved for against the husband and several other persons concerned in this transaction. — *CHIEF JUSTICE*. The foundation of this application I take to have been a contrivance for the defendant to do an unlawful act, viz. to take away this young lady, who appears to be under 16, out of the possession of a person having by lawful means the government and education of her, without his consent; which by the statute is declared to be unlawful. If there appears a reasonable satisfaction that they have done so, it will subject them to an information; and it is not necessary in this case for the Court to give any judgment upon the fact, whether legitimate or not: neither is that the point in the act, but the taking her from the possession of a person having by lawful means the government of her; and, therefore, whether this taking was by device of his own or the schemes of the lady will make no difference. As this is for a conspiracy and confederacy, if there is a reasonable satisfaction that the other defendants had any knowledge of the affair, that will be sufficient to join them in the information; I am, therefore, for granting the information. — *CHAPPLE J.* If it had rested singly on the second section of the act, I should have had some difficulty; but it is plain from the second and third sections together that they intended to take in different cases: the second section is, "That no person (generally) shall take away out of or from the possession of the father, or person appointed by the father, by his will or otherwise, to have the care of her;" but the third section is, "That no person above 14 shall take away a person from the possession of the father or mother, or other person having by lawful means the care of her:" so that these cases are quite distinct; and whether she be legitimate or not, makes no difference on the third section. — *WRIGHT J.* The third section takes in this case: and whether legitimate or not, makes no difference: the putative father of a natural child has a natural right to the care and education of it; and it is an act of humanity in him to do so; he has therefore the care of it by lawful means, and the taking her from his possession is an offence within the act. — Information was granted.

514. *Newland v. Osman*, T. T. 27 G. 2. MSS. — Debt upon a bond with condition to indemnify and save harmless the parish from a bastard-child. Plea, that the defendant had maintained the same child to a certain day, that is to say, to the 27th of October last; and that then he offered to take the said child to maintain, which they refused; and that if the churchwardens, or any of them, have been damnified, it is of their own wrong. Replication, that for three weeks from and after the said 27th day of October, the defendant did not provide nourishment for the child, but failed; and by reason thereof the plaintiffs, after the three weeks, expended 3s. for the maintenance of the child, and so were damnified. Demurrer: and joinder in demurrer. The question of law is, Whether a putative father may take a bastard-child into his own custody to maintain it? or, Whether the parish shall have the care of it? And the case of *Richards v. Hodges* (a) was mentioned, wherein the Court held this to be a good plea. In *Burwell's* case (b) it is held, that the father may maintain the child himself: in *Sherman's* case (c), that the justices can only make an order to maintain so long as the child shall be chargeable. — LEE C. J. The right way is to make the order "so long as the child shall be chargeable:" it is not to be limited to any certain time; and the reason given in all these cases is, that the father or mother may take it before the time. The intention of the 18 Eliz. c. 3. was to provide for the bastard, and at the same time to indemnify the parish; and the law could never think of taking the care and education of children from their parents; nor could this enter into the mind of any judge. Nourishing and maintaining certainly answers education. It hath been objected, that the excuse is collateral: I am not of that opinion; for all the inhabitants are parties, and the overseers are but trustees for them. It seems a sufficient excuse, and there is no answer on the part of the plaintiff to it: no objection has ever been thought of to pleas of this kind. — WRIGHT J. In the case in *Saunders* (d), it seems to have been admitted, that if this had been pleaded in the first instance it would have been good. I never did hear before, that the care of the child devolved upon the parish, where there was any person to take care of it: they are obliged to maintain the child where it is in danger of starving. (e) This Court has constantly held, by quashing the orders made in the manner above-mentioned, that the father has a right to take the child away. This is not a collateral excuse, but such a one as will save the penalty; and I cannot see that the parish has any sort of right or interest in the child. — DENISON J. The material objection taken to this plea is, Whether or no the putative father of a bastard-child can, by the law of England, take his bastard-child from the parish? I never did hear this doubted before; and I think, that the notion that he cannot is not to be countenanced nor encouraged. The law does not suppose that a man will not maintain his own child. It is said, the next heir is not to be trusted with the guardianship: I am sorry that was ever introduced into the law of England. It is an injurious notion of the people of England: it may rather be supposed that the parish-officers will be cruel to the child than the father. All the cases admit tacitly that the father hath such power; and some of them say so expressly; and I am very well satisfied that the law is so. Inhabitants, churchwardens, overseers, are all the same, and every

The putative father of a bastard child may take him from the parish, and maintain him himself.

But see Mr. J. Foster's observation at the end of this case. S. C. Sayer, 93.

(a) *Ante*, pl. 511.

(b) *Post*, pl. 565.

(c) *Post*, pl. 556.

(d) *Richard v. Hodges*, *ante*, pl. 511.

(e) *Vide Hays v. Bryant*, *post*, pl. 516.

part and condition is answered. I have known this plea very often pleaded: and that case in *Saunders* is the rule. — FOSTER J. I am not so clear in these points. I think the care of educating bastard-children is not to be considered as a burden to the parish; but as a trust, and that it should not be so easy for fathers to take them out of their care and custody. (a) The statute is express, that the justices shall order the father to contribute to the parish for the maintenance of the child. Though it is not to be supposed that the fathers will destroy their bastard-children, yet they may look upon them as a burden and a shame, and therefore either neglect them or put them into improper hands. The resolutions and

(a) *Rex v. Soper*, E. T. 33 G. 3. 5 T. R. 278. — A child of three years of age being brought up at the instance of her mother, on an *habeas corpus*, by the putative father, on whom an order of filiation had been made, and who had obtained the possession of the child by fraud. — *Burrough* objected to the child being restored to the mother, on the ground that, as the child had been adjudged to be the child of *Soper*, he had a right to the custody of her. — But Lord *Kenyon* C. J. said, that the putative father had no right to the custody of the child; and she was accordingly restored to the mother. So in *Rex v. Moseley*, H. 38 G. 3. it was decided that if the putative father of a bastard child obtain possession of it by fraud or force, the Court will order it to be restored on the application of its mother; but if he has the custody of it fairly, "I do not know," says Lord *Kenyon*, "that this Court would take it away from him," 5 East, 244. notes; and in the case of *Rex v. De Manneville*, E. T. 44 G. 3. it was determined that the father of a legitimate child is entitled to the custody of it, though an infant at the breast of its mother, if such custody is not likely to be injurious to the health or liberty of the child, 5 East. 221.; and the Court of Chancery will, under circumstances, prevent the father from removing the child out of the jurisdiction of the Court, *De Manneville v. De Manneville*, 10 Vesey, jun. 52 to 66. But the mother of an infant illegitimate child is entitled to the custody of the child in preference to the father, though from his circumstances he may be better able to educate it. *Ex parte Ann Keen*, Bos. & Pull. N. S. 148. *Rex v. Hopkins*, T. T. 46 G. 3. 7 East, 579. — *Garrow* moved on behalf of the mother of an infant bastard child, for a writ of *habeas corpus* directed to the defendants who had gotten possession of the child, to bring it before the Court, in order that it might be restored to her. The affidavits, which were very long, stated minutely all the

circumstances of the birth of the child, and the subsequent events attending the tracing of it into the possession of the defendants; from which it appeared that the child was born and soon after baptized in November 1803; that in August 1805, the defendants obtained possession of it by stratagem and pretence; but soon after returned it to the mother from whom it was again taken by force by Mrs. *Hopkins* and two soldiers in January 1806. — Lord *Ellenborough* C. J. had some doubt upon the opening of the case whether the Court could interfere on behalf of the mother of an illegitimate child, who had no legal right to the person of the child; and the question of the guardianship belonging to another forum, with which this Court could not interfere; and the child not being of an age to complain for itself of any legal restraint on its person. He therefore desired the matter to be mentioned again on this day, when the Court would have had an opportunity of looking into the case of *Dr. Moseley's* child. Accordingly on that day, the matter being again mentioned, and the substance of the affidavits fully stated; — Lord *Ellenborough* C. J. said: It appears that the mother of the child, so called, had it in her quiet possession, under her own care and protection, during the period of nurture. That she was first divested of her possession by stratagem, and after her recovering it again was afterwards dispossessed of it by force. In such a case every thing is to be presumed in her favour. Without touching, therefore, the question of guardianship, we think that this is a proper occasion for the Court, by means of this remedial writ, to restore the child to the same quiet custody in which it was before the transactions happened which are the subject of complaint: leaving to the proper forum the decision of any question touching the right of custody and guardianship of this child, with which we do not meddle. — Writ granted.

orders of justices of the peace have been grounded upon this, not for requiring security till the child come to a certain age, but because the order intended the age too far; therefore I am not so clear. The case in *Saunders* was only his own opinion. — Judgment for the defendant, unless desired to be argued again this term.

515. *Rex v. Hemlington*, *H. T.* 17 G. 3. *Cald.* 6. — The case found, that *E. Guy* and *Mary* her daughter, a bastard born at *H.*, went under a certificate from *H.*, dated *July* 11, 1772, to reside in *D.*; and that during her residence under that certificate *E.* was delivered of *A.* and *W.*, two other bastard children. That on the 11th of *September* 1775, *D.*, by an order of two justices, removed *E.* the mother and her daughter *M.* to *H.*; and that *E.* the mother carried with her *A.* and *W.*, her two other children, though not named in the order of removal, as nurse children to *D.* — *DAVENPORT* said, that the natural and legal right of a parent to take children under the age of nurture, wherever they might be settled, along with her wherever she might go, was unquestionable. That as to the question before the Court, which was, By what parish such children during such residence were to be maintained? the cases of *Wangford v. Brandon* (a), *Rex v. St. Giles-in-the-Fields* (b), and *Shermanbury v. Bolney* (c), which would be considered as having established that they must, during their residence with their mother in a parish not their own, be maintained at the expence of their own, were all determined, when the Court had in view a very different enquiry; and not, as here, the maintenance, but the settlement of the pauper. — *LORD MANSFIELD*: The point is settled. *Rex v. Sarmundam* (d), is expressly in point; and *Rex v. St. Giles's* (e), recognizes the same doctrine. — *ASTON J.* Whether the child be legitimate or not, does not at all vary the case: the principle is the same; and the authority in *Fortescue* says expressly, “so if a bastard.” — *WILLES* and *ASHHURST Js.* of the same opinion. (g)

Bastard living with its mother for nurture, but having a different settlement, must be maintained by the parish in which it is settled.

(a) *Carth.* 449.
1 *Ld. Raym.* 895.
Salk. 482.

(b) *Burr. Sett. Cases*, 2.

(c) *Ante*, pl. 512.

516. *Hays v. Bryant*, *T. T.* 29 G. 3. *H. Blac.* 253. — Debt on bond, brought by the surviving churchwarden and overseer of *R.* After oyer of the bond and condition, which was to indemnify the parish against the charges which should arise on account of the maintenance of such child or children as one *E. W.* then went with, and should be delivered of, the defendant pleaded, 1st, *Non est factum*. 2dly, *Non damnificati*. Replication, Issue on the first plea. To the second, That *E. W.* was delivered of two children, and that neither the defendant nor any person in his behalf provided any food or nourishment for them; by reason whereof the inhabitants of *R.*, (lest the children should perish for want of necessary food and nourishment) were forced and obliged to expend, and did necessarily expend 3*l.* in providing, &c. and so were damaged, &c. Rejoinder, That no justice's order was ever made upon the inhabitants, &c. of *R.*, for the maintenance and bringing-up of the said children, or for the payment and allowance of the money, &c.; and so if they did expend, &c. it was of their

Where a bastard child is born in a parish, for whose sustenance the parents neglect to provide necessities, the parish officers are obliged to do it without an order from the justices.

(d) *Fort.* 317, and vide 2d vol. title (g) The same point was settled in “Settlement by Birth.” the case of *Simpson v. Johnston*.

(e) *Burr. S. C. 2. Sett. and Rem.* *Dougl.* 7.

74. 1 *Sess. Cas.* 104. 193.

own voluntary act and wrong, &c. It was proved at the trial, that the defendant had agreed to pay 2s. 6d. per week for the maintenance of the children, and, in fact, paid it up to *Michaelmas* 1787, and then refused to pay any farther, alleging that the sum was too great. Verdict for plaintiff. — THE COURT held clearly, that an order of justice was not necessary to make the officers of the parish liable to do what they were otherwise under a legal obligation of doing, namely, to provide necessaries for the children; and therefore discharged the rule.

IV. *The Authority of the Justices.*

The two justices under the 18 Eliz. c. 3. must take a bond from the reputed father of a bastard child to perform the order or to appear at the Sessions. See *Rex v. Fox*, post, pl. 530.

(a) Vide *Eve's Case*, infra, where this is confirmed.

The justices may order the reputed father not only to pay a weekly sum for the maintenance of the child, but a gross sum for the extraordinary expences of the mother's delivery.

See *Rex v. Fox*, post, pl. 530.

The order of justice is conclusive of the fact of bastardy, until it is reversed. Salk. 524. Carth. 516.

517. *Smith's case*, M. T. 6 Car. 1. 2 Bulst. 342. — On a return to a *habeas corpus* it appeared, that two justices, upon examination and proof made before them, had adjudged S. to be the reputed father of a bastard child: upon which they made an order against him, under the 18 Eliz. c. 3. for maintenance to be provided for the said child, and for discharge of the parish; and by virtue of a warrant made by one of the said justices S. was committed for non-performance of the order. — JONES J. The justices have no power by the 18 Eliz. c. 3. to commit any one for non-performance of their order, but the two first and next justices are to take bond or recognizance, which ought to be in the disjunctive, to perform the order by them made, or to appear at the next Quarter Sessions, and to abide the order there. (a) — But THE COURT agreed, that when the recognizance is properly taken one justice of the peace by his warrant may commit.

518. *Rex v. Eve*, H. T. 34 & 35 Car. 2. 2 Show. 256. — Two justices adjudged J. E. to be the reputed father of a bastard child, and ordered him to pay weekly from the birth of the child, the sum of 2s. 6d. to the overseers of the poor for its maintenance, "unless the said J. E. shall otherwise discharge the said parish of such burthen as may accrue thereunto by reason of such bastard child;" and they further ordered him to pay the sum of 2l. towards the extraordinary charges of the lying-in of the mother; and lastly, that the said J. E. do immediately put in sufficient surety for the due performance of the order. — THE COURT: The order as to the first exception is well enough; for it has been often and often ruled, that the reputed father ought to pay the extraordinary charges; but as to the second, the recognizance ought to be in the disjunctive; for the binding him to perform the order is to exclude him from the benefit of his appeal to the Quarter Sessions. The order was, therefore, quashed as to this part, and confirmed as to the rest.

519. *Webb v. Cook*, M. T. 19 Jac. 1 Cro. Jac. 535 and 626. — PROHIBITION to stay a suit in the ecclesiastical court for defamation, in calling C. a whoremaster, and saying that he had a bastard; and shows that the defendant, who sued in the spiritual court, was sentenced, at the Sessions at N., for having this bastard, and ordered to keep it: and, therefore, the spiritual court could not examine this again. Upon this suggestion, the defendant demurred: and IT WAS ADJUDGED that the prohibition should stand; for, being sentenced to be the reputed father by the justices at Sessions, by authority of the law, it cannot be now impeached in the spiritual court or elsewhere, and all are concluded to say the contrary until it is reversed.

520 *Rex v. Chaffey, E. T. 4 Ann. Ld. Raym.* 858. — Several orders were made by the justices in *W.* against the defendant, as the putative father of a bastard child. A motion was made to quash one of them, by which the churchwarden and overseers are directed to seize what they themselves should think proper of the defendant's goods, to secure the parish from the maintenance of the child; because by 13 & 14 *Car. 2. c. 12.* the justices have only authority to make an order enabling the churchwardens, &c. to seize what the justices should think proper, and this order for this reason was quashed. Then exception was taken to the original order, in which it was ordered that the defendant should give security for payment of the sum the justices had imposed for the maintenance of the child, when it did not appear that the defendant had disobeyed the order in point of payment; whereas by the 18 *Eliz. c. 3.* an order for security cannot be made till after contempt. — And for this reason the order was quashed as to that part, and was confirmed as to the residue; and, *PER CURIAM*, When an order was confirmed in this Court, an attachment lies for non-performance of it, and therefore this Court will not take security of the party for the performance of it. But if the original order had been at Sessions, not removed hither, the Court would have taken security of him to appear there.

The justices cannot order the churchwardens to seize so much of the defendant's goods as they shall think proper, or compel the putative father to give security, until he pay the money ordered.
S. C. 3 Salk. 66.

521. *Rex v. West, E. T. 4 Ann. Ld. Raym.* 1157. — The defendant was adjudged by two justices the father of a bastard child, pursuant to the 18 *Eliz. c. 3.* and ordered to pay; and upon appeal the order was confirmed: and at the Sessions, and for not paying the money he was committed; and now was brought into Court by a writ of *habeas corpus.* (a) — *HOLT C. J.* The Sessions proceed by way of appeal in this matter, by the power given them by the 18 *Eliz. c. 3.*; but by that statute they have no power to commit for disobedience to their order. That statute directs a recognizance to be taken by the two justices who make the order, which if the party will not enter into, they, the two justices, may commit him. Indeed, if the Sessions proceed originally by 3 *Car. 1. c. 4.* they may commit for the non-performance of their order. It is immaterial to the present point, whether the justices did take a recognizance or not, because their neglect would not give the Sessions a power to commit, which the statute does not give them. — The defendant was discharged.

The justices out of Sessions may imprison for refusal to enter into recognizance, but the justices of Sessions on appeal cannot.
S. C. 11 Mod. 59. See 2 Bulst. 341.

(a) *Rex v. Bowen, post, pl. 534.*

522. *Rex v. Miles, M. T. 1 G. 1. 1 Sess. Cas.* 77. — On a motion to quash an order of bastardy, it was resolved, that if the father run away, and return, though fourteen years after, yet an order to fix the child on him is good, for there is no statute of limitation in these cases.

The justices may make an order at any distance of time.

523. *Rex v. Chandler, M. T. 11 G. 1. Str.* 612. — Indictment for secreting a woman big with an illegitimate child, so that she should not be had to give evidence about the father. The defendant demurred: and by THE COURT. Judgment must be given for the defendant, for the child cannot be illegitimate before it is born, there being always a possibility that it may be born in lawful wedlock; and by this statute the woman is not to be compelled. (a)

The justices cannot punish a person for secreting a woman big with child.
S. C. Ld. Ray. 1368. 2 Sess. Cas. 5. 8 Mod. 336.

(a) See the 6th G. 2. c. 31. § 4.

After an order of justices is discharged at Sessions, the justices cannot make a fresh order upon the same person. S. C. Str. 716. 1 Sess. Cas. 272. 1 Vent. 59. Cro. Car. 341. 350. 471. 2 Bulst. 355.

The justices cannot order that the putative father shall give security generally to perform the order. S. C. 2 Sess. Cas. 348. *Vide ante*, pl. 518. and *Rex v. Fox*, post, pl. 590.

The two justices out of Sessions cannot make an order to acquit or discharge the person who is charged with being the reputed father of a bastard child. S. C. 2 Str. 1050. 2 Sess. Cases. 229. *Foley*, 421.

524. *Rex v. Tenant*, M. T. 13 G. 1. *Ld. Raym.* 1423. — An order was made upon the defendant by two justices to maintain a bastard child, as being the reputed father; which order, after the merits were fully heard at the Sessions, was there discharged; and the defendant was bound to appear at the next Quarter Sessions, under an apprehension, as it was supposed, that better evidence might be found against him. After this, the same two justices made a new order upon the defendant to keep this bastard child. The last order of the two justices was now quashed by the Court, because they have made an order upon the defendant, which was afterwards regularly discharged upon appeal upon hearing the merits. The defendant was legally acquitted, and cannot be drawn in question again for the same fact. (b)

525. *Rex v. Messenger*, E. T. 8 G. 2. MSS. — ABNEY moved to quash an order of bastardy made by two justices of the liberty of the Tower of London, and confirmed at the Sessions held for the liberty, whereby the defendant was adjudged the father, &c. on the 18 *Eliz. c. 3.*, for that the justices in the latter part of the order have ordered the defendant, generally, to give security to perform the said order, when by 18 *Eliz. c. 3.* he has his election either to give security, or to enter into a recognizance to appear at the next Quarter Sessions, &c. — LORD HARDWICKE C. J. By 18 *Eliz. c. 3.* the putative father has an election to enter into a recognizance or to give security; and such order can be made only on default; therefore the original order, and the order of Sessions confirming it, must be quashed. — NOTE: No recognizance was taken of the defendant to appear at the next General Quarter Sessions for the liberty, &c. the part of the original order as to the security, and the order of the Sessions *in toto*, were quashed. And the reason is, for that the defendant was bound by that part of the order adjudging the defendant to be the putative father of the child, &c. whereby and for the not performing of which he might be committed.

526. *Rex v. Jenkin*, T. T. 9 G. 2. B. R. H. 301. — LORD HARDWICKE. An order of bastardy made by two justices was removed hither, and is to this effect: "Whereas complaint has been made to us by the overseers of the parish of C., that M. B. single woman, was delivered of a bastard child, &c. and hath charged J. with being the reputed father thereof, &c. we therefore, &c. both dwelling next to the said parish, having taken and considered the examination, and heard upon oath the proofs alleged before us, do adjudge that he is not the reputed father of, &c., and do acquit him of the same." The objection is, that these justices have no authority to give a judgment of discharge: and we are of that opinion. Their whole authority out of Sessions, in matters of this nature, arises by the 18 *Eliz. c. 3.* and the power given thereby is not of judicature, but merely to proceed by way of order, as in many other cases. And therefore the words of the statute are, "that they shall take order;" and accordingly it has been treated in this Court as an authority to them to make orders, and not as giving them a jurisdiction to convict or acquit the parties; for the orders have been always made in Eng-

(b) See also *Pridgeon's Case*, H. 9. Car. Cro. Car. 353., in which it was determined that the statute 3 Car. 1. c. 4. doth not aid in this case, or enable our Sessions to alter what was ordered in a former Sessions.

lish, and the evidence not required to be set forth, nor to set forth that the party was summoned: but it has been looked upon to be sufficient to say, in the words of the statute, "upon examination of the cause and circumstances;" and if it had been taken to be a proceeding to convict or acquit, they would all have been necessary. The question then is, What words in this statute warrant the justices in making such an order as this, which is neither for the relief of the parish, nor for the punishment of the party, which are the only two sorts of orders which the statute empowers them to make? If this matter had been examined at the Sessions, as it may be originally by virtue of the statute of 3 Car. 1. c. 4. § 16., it was said, that they might have an order to discharge him, which would be a good order and final (a); and that therefore, by parity of reason, the two justices might do so; for it was said, that the words of the statute which give the Sessions jurisdiction, refer to the manner of proceeding by two justices. It is true that, in *Slater's* case (b), and in *Pridgeon's* case (c), it was held that neither two justices, or a second Sessions, could reverse an order of discharge made at the Sessions: so likewise in *Tenant's* case (d), two justices made an order to charge the defendant, who appeared and was discharged; and an order made afterwards by two other justices to charge him was held void and quashed. Because he had been absolutely discharged at the Sessions. But none of these cases come up to this; for in all of them, the order which was taken to be final was made at the Sessions, which is the last resort in all these cases; and therefore it was rightly resolved, that when their opinion was given, it should not be drawn over again by the same Court or by two justices. It would be absurd, that when two justices have power by law to make original orders, and the Sessions have power upon appeal from those orders, as well as by original application, that two justices should have a power to alter their orders, when those very orders of alteration might be reversed by the Sessions; and it is reasonable that the order of Sessions should be conclusive. It would be inconvenient also to hold, that two justices may make a final order; for the statute 18 Eliz. c. 3. gives the parish no appeal, and the appeal for the party accused arises only from his being bound over to the Sessions; but if the two justices might make a final order of discharge, there is no method for the parish to appeal, but they would be concluded for ever without relief. — THE WHOLE COURT: The order must be quashed.

(a) See R. v. Tennant, ante, pl. 524.

(b) Post, pl. 605.

(c) Post, pl. 606.

(d) Ante, pl. 524.

527. *Rex v. Skinn* (e), E. T. 15 G.2. MSS. — An order of bastardy confirmed at the Sessions was removed into the King's Bench, and the following exceptions taken: — First, That it does not appear that the justices who made the order were justices "in or next the limits where the parish-church is," as directed by 18 Eliz. c. 3. Secondly, That the maintenance is joint for both children, 4s. a week from 16th September, during so long as the two female bastard children shall be chargeable; whereas it ought to be so much for each; for if one die, yet the defendant would be chargeable with the 4s. a week. Thirdly, That 3l. is ordered to be paid towards the expences of the parish on account of the said bastard children, and it does not appear what those expences

The justices, though not "in or next the limits" where the church of the parish is in which the child was born, may order a joint maintenance of several bastards, and that the father shall pay the expences of

(e) See *Rex v. Sweet*, post, pl. 536.

the parish, without stating what they are; but neither they nor the Sessions can order costs to be taxed by the clerk of the peace.

(a) *Ante*, pl. 504.

(b) *Ante*, pl. 34.

(c) *Ante*, pl. 8.

The two justices have no authority to make an order of bastardy where the child is born in an extra-parochial place.

(d) See *Rex v. Childers*, *post*, pl. 583. and *Rex v. Willy*, *post*, pl. 586.

(e) 1 Vent. 87.

(g) *Ante*, pl. 527.

The justices cannot commit a person for refusing to discover the father

were. Fourthly, To the order of Sessions it was objected, that they award costs of the appeal to be taxed by the clerk of the peace on pain of contempt of the Court, which they have no power to do. To these objections it was answered, First, That the words of the statute, "justices in or next the limits," are only directory, and so were held in *Rex v. Rooke* (a): so upon the 13 & 14 Car. 2. "justices of the division" have been held only directory: so upon the 43 Eliz. c. 2. overseers are to be appointed within one month after *Easter*, was held to be only directory in *Rex v. Sparrow* (b); and in *Rex v. Maurice* (c), upon an appointment of overseers, justices "in or near the division," was held to be directory: so in the case of the Duke of *Beaufort*, and on the Gause Act, the justices lived 15 miles distant, and held that was only directory. Secondly, If either of the children die, he is discharged; for it is to pay so long as the two children shall be chargeable. Thirdly, They need not enumerate the several expences, but say the expences in general is sufficient. As to the order of Sessions, the Sessions have no power to make such order as they think fit; but, however that is, the order of Sessions is at present immaterial. — THE COURT took time to consider of it; and afterwards gave their opinion, that the order of justices is good, and also the order of Sessions, except as to the awarding costs to be taxed by the clerk of the peace; so confirmed the order of justices and of Sessions, except as to the costs, and that they quashed.

528. *Rex v. Baker*, M. T. 19 G. 2. MSS. — Exceptions to an order of bastardy. First, It is not said to be made by justices "in or next the limits;" but it was answered and agreed, that these words in the act are only directory. Secondly, It is an *extra-parochial place*; for it appears that the child was born in the foreign of R. — *Answer*: It is alleged to be within the parish; the foreign of R. is the parish of R. Thirdly, It does not adjudge that the child was born within the parish. (d) Fourthly, It does not adjudge that the child is chargeable to the parish. — *Answer* to the third and fourth Objections. The order is entitled thus: "The order of us A. B. and C. D. justices, &c. concerning a bastard child born in the foreign of R., in the parish of R., and chargeable thereto, of which the churchwardens and overseers of the foreign of R. have made complaint." (e) Fifthly, It is not said to be made upon complaint of the churchwardens and overseers of the poor of the parish. — *Answer*: It is not necessary; which was allowed by the Court. — THE CHIEF JUSTICE: By its being "concerning a bastard child, &c., of which the churchwardens and overseers of the foreign of R. have made complaint," it seems to me under the complaint, and not any adjudication, that the child is born in or become chargeable to the parish; and if there is no adjudication that the child was born in the parish, the exception is good. The mentioning the child to be born in the parish is only in the title of the order and complaint of the churchwardens and overseers; and upon the Second and Third Exceptions, therefore the order was quashed. The First Exception was over-ruled in *Rex v. Skinn.* (g)

529. *Rex v. Southby*, M. T. 15 G. 2. MSS. — A. took a bastard child to nurse, and being summoned by a justice of peace was required to tell the name of the father, and to give security; both which he refused, upon which the justice committed him.

On motion for an information against the justice, THE COURT refused to grant it, but said he had done wrong in committing A.

530. *Rex v. Fox, M. T. 30 G. 2. MSS.*—Two justices made an order of bastardy on the defendant, adjudging him to be the putative father of the child, and ordering him to pay to the churchwardens and overseers the sum of 50s. for the midwife and other charges, and for the maintenance of the child from its birth to the making the order, and 2s. a week so long as the child should continue chargeable; and also, “that he give security to the said parish to perform the order.” One of the objections to this order was, that the justices had ordered the defendant to find security to indemnify the parish before there had been any breach of the order, when, on his refusal, they ought only to have taken his recognizance to appear at the Sessions. — DENISON J. I shall take time to read the 6 G. 2. c. 31. to see if it has given the justices any new power, because it has often been determined on 18 *Eliz. c. 3.*, that they have no power to take security, and upon that statute, that part of the order will certainly be ill; but if that should be the case, it will only be void *pro tanto*, and stand as to the parts that are good, as was resolved in *Rex v. Messenger. (a)* — FOSTER J. I think the statute of 6 G. 2. c. 31. was made for two purposes: First, To restrain the justices from proceeding on the application of every lewd woman pretending to be with child, &c., till complaint by the churchwardens, &c. Secondly, For the more effectually indemnifying the parish from the expence, &c.—THE COURT, on the last day of the term, gave judgment, that this objection was fatal, and not within the statute 6 G. 2. c. 31., which was passed quite for another purpose; and though the law seems defective in this point, and it had been well if the 6 G. 2. c. 31. had extended to it, yet we are to determine as the law stood on the 18 *Eliz. c. 3.*: Therefore, let the order be confirmed as to every thing but the security, and quashed as to that.

531. *Rex v. Felton, E. T. 31 G. 2. MSS.*—On motion for an information against the defendants for taking away a bastard child from its mother, and delivering it to the father, a man of fortune. — LORD MANSFIELD said: Neither the putative father nor mother had the legal right of guardianship; and if the putative father, having an order of bastardy made on him to contribute to the maintenance of the child, has a mind to take the child and provide for it, the parish cannot insist on his paying towards the maintenance while in his custody; and that he thought in this case, where the justice had ordered the child to be delivered to the mother, he (the justice) had done wrong, the father being in good circumstances, and the mother poor: and that the circumstances of the parents should direct in these cases.

532. *Rex v. Taylor, E. T. 5 G. 2. Burr. 1679.*—She was brought up by *habeas corpus*, having been committed to the house of correction for disobeying an order of two justices, “adjudging her child to be a bastard, and ordering her to maintain it by paying 8d. a week for so long time as the child should be chargeable to the parish,” there to remain without bail or mainprize, except she shall put in sufficient surety “to perform the said order, or else,” &c. or be otherwise discharged by due course of law. She was unmarried when the child was born,

of a bastard child.

The justices cannot order a putative father to give security to perform their order.

See *Rex v. Smith, ante*, pl. 461.

Rex v. Eve, ante, pl. 518.

Rex v. Price, post, pl. 614.

(a) *Ante*, pl. 525.

The justices cannot order a bastard child to be delivered to the care of its mother.

The justices may commit a woman, unmarried at the time the bastard was born, for disobeying their order of maintenance, although she

was married at the time the warrant of commitment was made.

See Dr. Foster's Case, 11 Co. 61.

(a) 2 Str. 1120.

Two justices may commit the mother of a bastard child either to the common gaol or to the house of correction, for disobeying an order of maintenance.

The justices have authority to commit a soldier for disobeying an order of bastardy; for he is not protected against such commitment by the *Mutiny Act*.

but was now married to *Taylor*. — LORD MANSFIELD. A *feme-covert* is liable to be prosecuted for crimes committed by her. This woman has disobeyed the order of the justices, and the 18 *Eliz. c. 3.* prescribes the punishment here inflicted upon her. There is no need to summon the husband in a criminal prosecution against the wife. Secondly, This is within the 6 *G. 1. c. 19. § 2.* She is committed for an offence, and for want of sureties. It is therefore within the provision of that act, and a legal commitment; and it is better for her than a commitment to the common gaol. — WILMOT J. had no doubt about it. The statute of 18 *Eliz. c. 3.* expressly considers the producing of bastards as an offence; not only the getting or bearing the child, but the leaving it to be a burthen on the parish, and defrauding the relief of the true poor of it. Therefore the justices may order a proper punishment, and also take order for the maintaining the child in relief of the parish; they may do either or both. Matrimony does not discharge the crime: she is still the object of the law as to criminal jurisdiction. Such was the case of the woman selling (a) gin. There was no need to summon the husband. The husband is not liable for the criminal conduct of his wife. Secondly, And if it be a crime, she is a criminal offender within the statute 6 *G. 1. c. 19.*, and may be committed to either prison, as the justices think proper. And it is for the ease, benefit, and advantage of the party committed to send her to the house of correction rather than to the common gaol. The order mentioned by Mr. *Foley* was made upon a *feme-covert* "to keep the grandchild;" but such orders made upon parents and children "reciprocally to maintain each other," are not upon the foot of criminality, but to give a moral obligation a legal efficacy. As to the conclusion of the commitment, the words of the act are pursued. The addition of, "and "until discharged by due course of law," is only *nimia cautela*, and *non nocet*; it cannot vitiate the former part of the order. — YATES J. concurred. First, All offences are personal, and no change of the offender's circumstances can discharge her. The husband was no object of this law, therefore there was no need to summon him. Secondly, It is good within the 6 *G. 1. c. 19.*, though it had been bad under 18 *Eliz. c. 3.* — MR. JUSTICE ASTON concurred likewise. — PER CURIAM unanimously, remanded.

533. *Rex v. Archer*, H. T. 28 *G. 3. 2 T. R. 273.* — The Sessions adjudged the defendant, a soldier, and in actual service, to be the reputed father of a bastard child, and ordered him to pay 1s. 6d. weekly, &c. At the next Sessions the defendant was committed to bridewell for disobeying the order, till he should find sufficient sureties for the performance of it. A rule was obtained to show cause why the order, by which the defendant was committed, should not be set aside, because the defendant being a soldier in actual service, was protected from being arrested for that cause, by § 63. of the mutiny act. — ASHHURST J. It appears to me that the present case does not come within the provisions of the mutiny act. The first part of the sixty-third section was intended to apply merely to the cases of civil actions; for it begins with stating, that "to prevent any unjust or fraudulent arrests," &c.; that was the mischief intended to be guarded against: then it provides, that no person who shall enlist, &c. shall be liable to be taken out of His Majesty's service by any process or execution

whatever, other than for some criminal matter, or for a real debt amounting to 20*l*. It appears from this part of the act of parliament, that the legislature had only in view the preventing of arrests in civil actions, and it has no relations to crimes or any thing of a criminal nature: so that the case of a soldier who is taken up for disobeying an order of justice does not come within this part of the statute. But I have no difficulty in saying, if it were necessary to have recourse to it, that this cause of commitment is of a criminal nature. The disobedience of an order of justices is so far criminal, that in almost every instance the party disobeying may be indicted for it; this shows it to be a crime. Therefore I am of opinion, that the Court of Sessions have adjudged rightly, and that we cannot release the defendant from his commitment under the mutiny act.—GROSE J. This is so clear a case, that I think it unnecessary to add any thing to what has been already said.—Rule discharged.

534. *Rex v. Bowen*, H. T. 33 G. 3. 5 T. R. 156.—The defendant was committed on 6 G. 2. c. 31. for begetting a bastard child, &c. At the time of his being apprehended on the charge specified, he was and still remained a private soldier enlisted, and actually serving, and had no property, except his pay and subsistence as such soldier.—LORD KENYON C. J. I am glad to find that the opinion of this Court, as delivered in *Rex v. Archer* (a), was adopted by the Court of Sessions in this case, who thought the defendant was not entitled to be discharged out of custody. The case of *Rex v. Archer* was decided on grounds perfectly satisfactory to me. There can be no doubt but that incontinence is a crime, and it has always been considered as such in the Ecclesiastical Courts. Now the clause in the mutiny acts, which exempts soldiers from arrests in cases where the demand is under 20*l*. is clearly confined to civil actions. And the instances put at the bar, in which it was supposed that the Court would interfere on behalf of the soldier, are cases of civil actions; a penal action is so far considered as a civil action, that a Quaker may be examined on his affirmation as a witness on the trial of it: it is a civil action, though arising on a penal statute. But this proceeding cannot be considered in the nature of a civil action; it is altogether a criminal process.

One justice may commit a soldier in actual service for want of sureties under the stat. 6 G. 2. c. 31. for being the father of a bastard child.

(a) *Ante*, pl. 533:

535. *Dickinson v. Brown*, M. T. 35 G. 3. *Peake's N. P.* 234.—Trespass for breaking and entering the plaintiff's house, and imprisoning him. The defendant justified the trespass, under a justice of peace's warrant to apprehend the plaintiff as the putative father of a bastard child, in order to indemnify the parish or enter into a recognizance for his appearance at the Sessions. To this plea the plaintiff made a new assignment, stating, that after the plaintiff had been apprehended, and executed a bond to indemnify the parish, and at a different time from that stated in the plea, &c. the defendants committed the trespasses complained of. It appeared that on the 2d of October 1793, the plaintiff was apprehended under the warrant, and then went to the vestry, where he agreed to enter into a bond with two sureties to indemnify the parish. He and one of the sureties then executed the bond, but the other surety did not. On the 17th of January 1794, the plaintiff was again apprehended, by the direction of the parish officers, in order to compel him to procure another surety. No

A justice's warrant continues in force until fully executed. If the putative father of a bastard child agree to indemnify the parish, they may demand any security they think proper.

fresh warrant had been obtained. — MINGAY and 'ESPINASSE for the plaintiff, contended that the second arrest was illegal and could not be justified; that when the plaintiff had been once apprehended, the warrant was executed; and that, supposing the parish were not sufficiently indemnified, yet before he could be apprehended a second time, a new warrant should have been obtained for that purpose. — LORD KENYON said, that the warrant of a magistrate was not returnable at any particular time, but continued in force until it was fully executed and obeyed, though it were seven years, provided the magistrate so long lived. That the warrant was not in this case fully executed, the parish officers had a right to have any security they required, however large, if the business was settled in that way. This was no hardship on the plaintiff, for he was not obliged to enter into any such security, but might enter in a recognizance to appear at the Sessions, and abide such order as they should make. (a) — Verdict for the defendants.

See also the case of *Mayhew v. Parker*, *post*, vol. ii. pl. 967.

(a) Vide stat. 6 G. 2. c. 31.

In an order of filiation made at the Sessions, stated that "whereas it appears to this Court, as well on complaint, &c. as on the oath of E. K., single woman, that she, the said E. K., on the 13th May 1805, was delivered of a male bastard child, in the parish of N., and that the said child is now chargeable, &c.; and further, that one J. S. did beget the said child; &c. And whereas the said J. S. hath been duly summoned, &c.: now it is adjudged by this Court, that the said J. S. is the reputed father of the said child, and it is ordered that he pay 11*l.* for the lying-in of the said E. K., and the maintenance of the child to the making of the order; and the further sum of 12*l.* for the costs of the said parish in and about the obtaining of this order. And it is further ordered, &c." — Two objections were made to this order, 1st, That there was no sufficient adjudication of the birth of the bastard child in the parish of N., but only a recital of that fact: 2dly, That the Sessions had no jurisdiction to award the payment of costs. — GARROW, in support of the order, as to the first point cited *Rex v. Gravesend* (b), *Rex v. Moravia* (c), and *Rex v. Fox* cited in *Rex v. Price*. (d) As to the second, *Rex v. Skinn* (e), *Rex v. Nelson*. (g) — LAWES, *contra*, referred to *Rex v. Cuddington* (h), and *Rex v. Butcher*. (i) And he also contended, that if the order was quashed as to costs, it must be quashed altogether, for that the order being one and entire could not be divided; but LE BLANC J. said, that the justices themselves had separated the sums in their order. — LORD ELLENBOROUGH C.J. The first objection made is, that there is no adjudication of the parish where the child was born: but when the order states, that whereas it appears to the justices, on the oath of the mother, that she was delivered of the child in the parish of N.; we must understand it as an affirmative proposition by the justices that the fact was sworn to by the mother before them, and that they found it to be true; for they proceed upon that ground to adjudicate that the defendant is the reputed father, and that for the better relief of that parish he shall pay such and such sums: and by the statute giving relief in this case, the reputed father is only bound to pay such relief to the parish in which the bastard child is born. And there is no case where an order in this form has ever been held to be bad; for in *Rex*

536. *Rex v. Sweet*, M. T. 48 G. 3. 9 East, 25. — An order of filiation made at the Sessions, stated that "whereas it appears to this Court, as well on complaint, &c. as on the oath of E. K., single woman, that she, the said E. K., on the 13th May 1805, was delivered of a male bastard child, in the parish of N., and that the said child is now chargeable, &c.; and further, that one J. S. did beget the said child; &c. And whereas the said J. S. hath been duly summoned, &c.: now it is adjudged by this Court, that the said J. S. is the reputed father of the said child, and it is ordered that he pay 11*l.* for the lying-in of the said E. K., and the maintenance of the child to the making of the order; and the further sum of 12*l.* for the costs of the said parish in and about the obtaining of this order. And it is further ordered, &c." — Two objections were made to this order, 1st, That there was no sufficient adjudication of the birth of the bastard child in the parish of N., but only a recital of that fact: 2dly, That the Sessions had no jurisdiction to award the payment of costs. — GARROW, in support of the order, as to the first point cited *Rex v. Gravesend* (b), *Rex v. Moravia* (c), and *Rex v. Fox* cited in *Rex v. Price*. (d) As to the second, *Rex v. Skinn* (e), *Rex v. Nelson*. (g) — LAWES, *contra*, referred to *Rex v. Cuddington* (h), and *Rex v. Butcher*. (i) And he also contended, that if the order was quashed as to costs, it must be quashed altogether, for that the order being one and entire could not be divided; but LE BLANC J. said, that the justices themselves had separated the sums in their order. — LORD ELLENBOROUGH C.J. The first objection made is, that there is no adjudication of the parish where the child was born: but when the order states, that whereas it appears to the justices, on the oath of the mother, that she was delivered of the child in the parish of N.; we must understand it as an affirmative proposition by the justices that the fact was sworn to by the mother before them, and that they found it to be true; for they proceed upon that ground to adjudicate that the defendant is the reputed father, and that for the better relief of that parish he shall pay such and such sums: and by the statute giving relief in this case, the reputed father is only bound to pay such relief to the parish in which the bastard child is born. And there is no case where an order in this form has ever been held to be bad; for in *Rex*

(b) *Post*, pl. 589.

(c) *Post*, pl. 590.

(d) *Post*, pl. 614.

(e) *Ante*, pl. 527.

(g) 1 Vent. 37.

(h) *Post*, pl. 575.

(i) *Ante*, pl. 585.

v. Butcher, which was supposed to come nearest to this, the ambiguity was of another sort. Secondly, It is objected that there is no express power given by any of the statutes to the justices to award costs in this matter; and that, without that, they have no such power. The only words of the stat. 18 *Eliz.* relied on are, that the order is to be made for *the better relief* of the parish; which it is said cannot effectually be relieved, without such a power. But there does not appear to be any instance, from the passing of the statute to the present time, when the justices have awarded costs: the only case which has been found, seeming at all to bear that way, is that of *Rex v. Nelson*: but upon looking into it more accurately, it appears that the award of the costs there to be paid was by the order of this Court upon the removal of the original order by *certiorari*; and those, it is evident, were costs incurred subsequent to the making of the original order, by the very terms of it. Under what particular circumstances those costs were awarded does not appear, as there is no recital of the matter in the order itself. The case of *Rex v. Skinn*, may indeed be open to the answer which has been given, that at any rate the Sessions could not delegate the power of taxing the costs: otherwise it would bear against the power contended for. In *Rex v. Moravia*, the question turned on the generality of the award of "incident charges and expences:" but the charges and expences there meant were such as were *incident to the maintenance of the child*. There is, therefore, no case which enables us to put the construction contended for on the words of the statute of *Eliz.*, as giving the justices authority to award costs in this case. Then let us look to the reason and views of the statute itself, to see if such must have been the intention of the legislature; for it might not be too late even now to put a right judicial construction upon it, if a wrong construction had been put upon it by usage. But there is nothing appearing in the statute which necessarily requires such a power to be given to the justices: the mischiefs recited are the charges of keeping the bastard children, and the evil example of others; for each of which a particular remedy is given; the one by making an order for the charges already incurred by the parish on account of the child, and for its future maintenance; the other by the punishment of the lewd mother and reputed father. Therefore, neither in express terms, nor by fair inference, is there any power given to the justices to order the costs of obtaining the order to be paid by the defendant: the order, therefore, is bad *pro tanto*; but it is good for the rest, as the justices have distinguished how much was given for maintenance, and how much for costs. And this very case shows the inconvenience which would arise from extending the power of justices in this respect; for much additional expence has been incurred by going to the Sessions to get an original order of filiation, instead of applying to two magistrates near at hand.—GROSZ J. I still feel a difficulty in saying, that the justices may not direct the defendant to pay the costs of the parish obtaining the order. It is true, that the expences may be improperly enhanced, by going in the first instance to the Quarter Sessions, instead of applying to two neighbouring justices, where that may be done; but of that the justices will judge in considering the *quantum* of costs. But as the Sessions have an original jurisdiction in this matter,

and the words of the statute of *Eliz.* being, that the justices shall take order "*for the better relief of every such parish in part or in all*," and this being a remedial law; it did appear to me that the justices had a power of directing the fair and necessary expences of the parish in obtaining the relief granted to be paid to them; otherwise, so far from taking order for their better relief in part or in all, the parish may, in some cases, be more burthened by the expence of obtaining the order than by the maintenance of the child. However, as my Lord and my Brothers have no doubt upon the subject, it must be presumed that they have put the right construction on the statute. — LAWRENCE J. I agree with my Lord in the construction he has put upon the statute of *Eliz.*: it recites two mischiefs; the one, that the bastards are left to be kept at the charges of the parish where they are born; the other, the evil example and encouragement of lewd life: and it directs that the justices shall take order, as well for the punishment of the parents, as also for the *better relief* of the parish. Now these latter words being general, we must collect what relief the legislature intended by adverting to the mischief before recited, which was that the parish was left burthened with the charges of keeping the child; this cannot include the costs to be afterwards incurred in obtaining the order of filiation and maintenance. But if the words were more doubtful than they are, yet after so great a lapse of time since the passing of the act, without any case having put so extended a construction on the words in question, and costs not having till now ever been ordered to be paid by the justices; it would be going too far at this time of day to say, that they have the power of awarding costs. With respect to the case of *Rex v. Nelson*, it is clear that the costs there spoken of meant the costs incurred in this Court: the report in *Ventris* points to the costs of suing out the *certiorari*. This Court has no original jurisdiction to make an order of filiation; they could only quash or confirm the order of the justices below. But if they confirmed the order, and thought it had been vexatiously removed hither by *certiorari*; they might very well order the defendant to pay the costs incurred in this Court. — LE BLANC J. This is a new attempt to give the justices below a power of awarding costs in this case, which they never exercised before; and, in my opinion, never had under the statute of *Eliz.* The power conferred on the justices of giving relief to the burthened parish, in part or in all, must be confined to relief against the mischief before recited, that of maintaining the child born in such parish, and cannot be applied to the subsequent expence of procuring an order of filiation and maintenance. And this, I think, would be the proper construction of the words, even if they were in a recent act of parliament, which was now to have a construction put upon it for the first time. But such, it appears, has always been considered to be the true construction of the act: and a strong argument is to be drawn from the case of *Rex v. Moravia*, where the very ground on which the Court confirmed the order for the payment of a gross sum "for the maintenances of the child and other incident charges and expences," was because they considered other incident charges and expences as confined to charges and expences attending the maintenance of the child: considering that, unless so confined, the order would

have been bad. So much, therefore, of the order as directs the payment of costs, must be quashed; but it must be confirmed for the rest, the order itself having separated the sums to be paid. — Order quashed as to the payment of costs.

537. *Res v. De Brouquens*, T. T. 51 G. 3. 14 East, 277. — An order of bastardy was made by two justices of C.; in which, after reciting that E. A. (single woman) on the 13th of September 1810, was delivered of a dead-born male bastard child at S., and that the said E. A., mother of the said bastard child, hath been chargeable to the parish of S., and further that the defendant begot the said bastard child on the body of the said E. A., &c., the judges concluded by adjudging the defendant to be the reputed father of the said bastard child, and ordered him to pay to the parish officers 6l. 14s. "for and towards the lying-in of the said E. A., and for the expences incurred in apprehending the defendant, and for making this order." The order was removed by *certiorari* into this Court. — LORD ELLENBOROUGH C. J. In order to come under the denomination of a *bastard*, must not the child be born alive? All the provisions in the several statutes assume the birth of a child, which, of course, must be born alive. — GROSE J. No dead substance is the object of legislative provision in any of the acts. — LE BLANC J. Many of the provisions, even in the statute 49 G. 3. c. 68. are quite inapplicable to a dead child; and all through the act there are words of reference to a bastard born out of lawful matrimony. — Rule absolute for quashing the order of bastardy.

Under the statutes concerning bastards, no order of filiation, or of the payment of expences, can be made, unless the child be born alive.

538. *Robson v. Spearman*, H. T. 1 G. 4. 3 B. & A. 498. — The declaration stated that defendants made an assault upon the plaintiff, and seized, &c. and imprisoned him, without reasonable cause, in a certain gaol, &c. for six days, and until he paid a large sum of money. Plea, not guilty. At the trial at the last Spring assizes for N., before Bayley J., it appeared that the plaintiff, against whom a regular order of filiation had been previously made, had been committed by the warrant of the defendant S., who was a magistrate, for not having paid the arrears due under that order. The warrant being produced, appeared to be for the commitment of the plaintiff to the gaol of M., *until he should pay the sum due and legal accustomed fees, or until he should be otherwise delivered by due course of law*. The plaintiff having been imprisoned six days, paid the money, and was discharged. It also appeared, that the notice which was given to the defendant S., pursuant to the statute 24 G. 2. c. 44., after reciting the arrest and imprisonment of the plaintiff, and that he was compelled to pay a sum of money in order to obtain his discharge, stated that a *precept called a latitat* would be issued against him for the said imprisonment and sum of money. It was contended for the defendants, that this notice was insufficient; but the learned judge over-ruled this objection, and being also of opinion that the warrant was illegal, inasmuch as by the 49 G. 3. c. 68. § 3. the magistrate was empowered only to commit for three months, unless the money be sooner paid (whereas here the commitment was general, being until he should pay the money), he directed the jury to find a verdict for the plaintiff against the defendant S. The other defendant, who was the constable who executed the warrant, had a verdict. — ABBOTT C. J. I am of opinion that the warrant in this

A warrant for the commitment of the putative father of a bastard child, until he should pay a sum due for the maintenance of the child and legal accustomed fees, or until he should be otherwise delivered by due course of law, is bad, the magistrate not being authorised under 49 G. 3. c. 68. § 3. to make such a warrant.

case was illegal, not being such as the justice had authority to make. It was his duty to have pursued the words of the statute of the 49 G. 3. c. 68. If he had so done, it would have given the party committed the option either of paying the money or of staying three months in prison, and being thereby altogether discharged from the payment. This warrant is for his imprisonment till he shall pay the money, and deprives the party of that advantage. The difference is a most material one, and it gives the party committed a right of action against the magistrate. There does not appear to me any weight in the other objection. The only effect which the omission of any mention of a battery in the notice could produce, would be to prevent the plaintiff at the trial from giving evidence of a battery. It was, however, quite sufficient to apprise the magistrate of the nature of the action about to be brought against him, so as to have enabled him, if he had thought proper, to have tendered amends. I can see, therefore, no ground for disturbing the present verdict. — Rule refused.

V. The Complaint and Examination.

An order of bastardy made on the examination of one justice only, is bad. See *Billings v. Prinn*, post, pl. 543.

The examination may be taken by one justice in the presence of the other.

By 18 Eliz. c. 3. the complaint may be made by others as well as the parish.

But by 6 G. 2. c. 31. a complaint must be made by the parish.

Both justices must be present at the same time and place when a woman is examined and committed for not filiating a bastard child.

539. *Rex v. Beard*, H. T. 8 W. 3. 2 Salk. 478. — An order made by two justices of the peace in *Sussex*, adjudging *B.* to be the father of a bastard child, was quashed, because it appeared thereby that the examination of the woman was by one justice only, though the ordering part thereof was said to be made by both; and *B.* was bound over to the next Sessions.

540. *Rex v. West*, T. T. 3 Ann. 6 Mod. 180. — An order of two justices, reciting, that upon examination upon oath before one of them of the mother of a bastard child, it did appear that *A.* was the father, therefore they adjudge him to be so, and order him to pay, &c. — PER CURIAM: The examination is a judicial act, and ought to be by both; if indeed they are both present, and one only of them examined, it is sufficient.

541. *Rex v. Buckall*, M. T. 3 G. 2. 1 Bar. K. B. 261. — This was an order of bastardy made by two justices. It was objected, that the order did not appear to be made on complaint of the parish. — THE COURT said, that the 18 Eliz. c. 3. on which statute this order is founded, does not require that the parish should complain (*a*), but gives the justices power to make such order on complaint of any other. — The order was confirmed.

542. *Rex v. Nottingham*, E. T. 10 G. 2. MSS. — An order of bastardy must be made on complaint of the parish where the child is born, and it must be stated in the order to have been made on such complaint.

543. *Billings v. Prinn*, T. T. 15 G. 3. 2 Bl. Rep. 1017. — Trespass and false imprisonment for committing the plaintiff to Bridewell for refusing to filiate a bastard child. She was examined severally, at separate times, (but in the same day,) and in separate places, by the two defendants, who were justices of the peace for *Gloucestershire*; and they separately signed the warrant of commitment. On the trial at the last assizes, verdict for the plaintiff with 5*l.* damages. — DE GREY C. J. This case is unfortunately too clear to bear an argument. There is no use in appointing two

(a) But see 6 G. 2. c. 31. and *Rex v. Fox*, ante, pl. 530.

or more persons to exercise judicial powers, unless they are to act together. (a) Separate examinations by different magistrates may produce different facts; on which then is the adjudication to proceed? It is exceedingly clear, that in case of an action thus brought to try the validity of the commitment, it cannot be supported by law. — GOULD, BLACKSTONE, and NARES Js. of the same opinion. — Rule discharged.

(a) See *Rex v. Forrest, ante*, pl. 23.

544. *Rex v. Upton Gray*, T. T. 23 G. 3. Cald. 308. — Two justices adjudge *W. N.* to be the reputed father "of a female bastard child begotten on *S. A.*" &c. The Sessions on appeal quashed this order, because it did not appear upon the face of the order that *S. A.* was examined in the presence of *W. N.* at the time of making the order. — LORD MANSFIELD. The presence of the putative father is not necessary before the justices out of the Sessions; and as the Sessions have stated this and no other to have been the foundation of their proceeding, we cannot presume that they went upon any other. — WILLES and BULLER Js. concurred. — Original order affirmed.

It is not necessary to the validity of an order of filiation that the putative father should be present at the examination of the woman before the two justices.

545. *Rex v. Ravenstone*, M. T. 34 G. 3. 5 T. R. 373. — The Sessions made an order of filiation and maintenance on *W. S.* It appeared on evidence, that *S. H.* died within two hours after she was delivered of the child. That she had previously been examined before a justice of the peace, according to the provision of the 6 G. 2. c. 31., and her examination was produced, in which she deposed, that the said *W. S.* was the father of the child. When this examination was offered in evidence, it was objected to on the behalf of *W. S.*, both as inadmissible and insufficient; the Court received it in evidence, but thought that, the woman being dead, no order of filiation could be made. — PER CURIAM: It is clear from the concluding part of the case, that the only doubt entertained by the justices at the Sessions was, whether or not they could make an order of filiation, the woman being dead, and not whether the evidence was sufficient to make an order on the party before them, if under these circumstances they could make any order at all; and as to the question reserved for the opinion of this Court, there is no doubt but that they may proceed to make the order, although the woman be dead. The examination having been taken before a magistrate in the course of a judicial proceeding, under the statute of 6 G. 2. c. 31. is certainly admissible evidence, like the depositions taken under the statute of *Philip and Mary* (a): and being admissible, and not contradicted by any other evidence, it seems to be conclusive. We cannot, indeed, compel the justices at the Sessions to decide on the weight of evidence; but when we determine that this evidence is admissible in point of law, and that the justices may make the order applied for though the woman be dead, we have no doubt but that they will also be of opinion that this evidence is conclusive against the party against whom the application has been made.

The examination of a pregnant woman taken by a justice under 6 G. 2. c. 31. is evidence sufficient for the Sessions to make an order of filiation on the putative father, though the woman be dead.

See *Rex v. Clayton, infra*.

(a) 1 & 2 P. & M. c. 13.

546. *Rex v. Clayton*, M. T. 43 G. 3. 3 East, 58. — Two justices of the peace made an order of bastardy, entitled, "The order of *A. B.* and *C. D.* the justices, &c., made at, &c., concerning a female bastard child lately born in the township of *B.*, of the body of *M. C.*, single woman, *since deceased*:" reciting that whereas it had appeared to them, the said justices, as well

Every reasonable intentment will be made in favour of an order of justices. Therefore where an order

of bastardy, reciting that it had appeared to the justices on oath of R. T. that the said *Mary Cole* (referring to the title in which she was named as *Mary Cole deceased*) was delivered of a bastard child, &c. and further that upon the examination of the said M. C. taken on oath, &c. dated, &c. in the presence of the said R. T. the said M. C. upon her oath charged the defendant with being the father, &c. adjudged that therefore upon examination of the cause and circumstances of the premises, as well on the oath of the said M. C. before birth so taken, and also upon the oath of the said R. T. that the defendant was the father, and that he should pay so much, &c. the Court will intend, (especially after appeal confirming the order) that M. C. was dead at the time of the order made, and that her examination on oath before taken in writing under the statute 6 G. 2. c. 31. was verified on the oath of R. T. before the magistrates making the order, which

upon the complaint of the churchwardens, &c., of the township of B., in the said riding, as upon oath of R. T., of B., &c., that the said M. C., about six weeks ago then last past, was delivered of a female bastard child, in the said township of B., and that the said bastard child was then chargeable to the said township, and likely so to continue; and further, that upon the examination of the said M. C., taken upon oath before A. B. (another justice of peace), dated the 11th of May last past, in the presence of the said R. T., the said M. C., upon her oath, charged G. C., of, &c. (the defendant) with having begotten her with the child of which she was then pregnant; they therefore, upon the examination of the cause and circumstances of the premises, as well upon the oath of the said M. C., before birth, so taken as aforesaid, and also upon the oath of the said R. T., did thereby adjudge the said defendant to be the reputed father of the said bastard child: and ordered him to pay certain sums as such towards the relief of the township, &c., given under their hands and seals, &c. (dated the 14th of October 1801). The original order was confirmed, on appeal, by the Quarter Sessions: and both orders being removed into this Court, a rule was granted to show cause why they should not be quashed for insufficiency: First, Because it is not shown that the defendant was summoned to appear before the magistrates to answer the complaint, nor (which might have cured the want of summons), that he had in fact appeared (a): Secondly, Because the original order was made upon illegal evidence. — LORD ELLENBOROUGH C. J. The law has been settled by so strong a series of decisions from the time of Lord Holt down to a very recent period, that every intendment shall be made in favour of an order of justices, that we must see whether, by any intendment which can be made, the present order can be supported. Now it is not a very forced intendment, that the examination of M. C., which is described as bearing date the 11th of May, &c. was in writing; for it must be something on which a date could be impressed. Then it must also have been produced to those who so describe it. Nor does it necessarily appear that only the fact of the examination of M. C. was testified by R. T., the witness examined; for the order goes on, "And further," &c. by which it must be understood that it further appeared to the justices, that upon the examination of the said M. C., taken on oath, &c. in the presence of R. T., she charged the defendant with being the father, &c. Then it is not a strained inference to make, that the original examination from whence this appeared to the justices, was produced and verified upon the oath of R. T. Besides, this is a case after appeal to the Sessions, where it must be taken that these objections, if founded in fact, would have been proved and admitted, and that if either not made, or made and overruled, they were without foundation in fact. Then if the woman were dead, the proceeding on her examination afterwards is fully warranted by the case of *Rex v. Ravenstone*. (b) As to the other point, of the want of summons, the form of the order would have been better if it had followed the precedents; but the cases cited sanction the omission. — The other judges declared themselves of the same opinion; and LAWRENCE J. added, that as to the ob-

(a) Vide *Rex v. Stone*, 1 E. R. 639.(b) *Ante*, pl. 545.

jection, that it did not appear that the woman was dead, the contrary must be intended; for the title of the order described *M. C.* as being deceased, and she was mentioned in the body of it as the said *M. C.*, which refers to the woman said in the title of it to be dead. — Both orders confirmed.

547. *Rex v. Martyr, M. T. 51 G. 3. 13 East, 56.* — This came on upon a rule on the defendants, justices of the peace, to show cause why a *mandamus* should not issue to them to take the examination of *M. B.*, a pauper of the parish of *D.*, touching the reputed father of a bastard child of which she was pregnant, and also commanding them to issue their summons directed to *W. F.*, of the same parish, to compel his appearance before them, to answer for having disobeyed an order of bastardy made against him. The application was founded upon the affidavit of *F. S.*, stating that in 1787, *D.* and other parishes united, to adopt the provisions of the stat. 22 G. 3. c. 83., for the better relief and employment of the poor, and that under that act he was duly appointed guardian of the poor for *D.* in 1794, and that from that time up to *Easter* 1810, at the several public meetings held in *Easter* week respectively, for the appointment of parish-officers in general, and also for the purposes of the said act; he from time to time duly entered into an agreement with the parishioners duly qualified under the act for that purpose, to continue guardian of the poor, and that by virtue of such agreements he did continue to execute the duties of the office up to *Easter* 1810, when he was in like manner continued in office for the ensuing year. That at a meeting of justices on the 16th of *June* last, *S.* as such guardian, attended with *M. B.*, to filiate the bastard child, of which she was pregnant, and informed the defendants then present, that he had agreed with the parish of *D.* to continue in the office of guardian for the year ensuing, and in that character required them to take her examination, but they refused to take cognizance of the matter. That he also applied to them at the same time as such guardian, for a summons against *W. F.*, to appear before them for neglecting to obey an order of bastardy, which they also refused to issue. That the justice required a list of the persons qualified to serve the office of guardian to be made out and laid before them, but that the parish persisted in their appointment of *S.*, notwithstanding which the defendants without any such list made out or returned to them, on the 19th of *May*, made an appointment in writing of *J. P.*, of *D.*, to be guardian of the poor of that parish, though he refused to accept the office. The defendants in answer stated that at the annual meeting of the justices, held for the appointment of parish officers on the 5th of *May* last, *inter alia*, for the purpose of appointing a guardian of the poor of *D.* under the provisions of the act (the former appointment having, as they submitted, then ceased), no list of persons qualified to fill the office having been returned to them from the parish of *D.*, they adjourned to the 19th, for the purpose of having the list returned, and no list being then returned, and considering *S.* to be an unfit person to be continued in the office, they appointed *J. P.* a person duly qualified to be guardian for that year. That they believed that the parishioners stated as having concurred in the agreement to continue *S.* guardian of the poor for the year ensuing, were not two-thirds in

examination is sufficient after the death of the mother to warrant a subse-

quent order of filiation.

One who is *de facto* guardian of the poor of a parish united with other parishes under the statute 22 G. 3. c. 83. for the better relief and employment of the poor, and who is received and acknowledged by the parish as guardian, though not legally appointed such under the statute is yet competent to apply in that character to a justice of the peace to take the examination of a single woman with child in order to filiate the bastard which by the statute 6 G. 2. c. 31. § 1. is directed to be made upon application by the overseers of the poor, in whose place such guardian is appointed: and he is also competent to apply to the justice for a summons against a reputed father for not obeying an order of bastardy: which by statute 49 G. 3. c. 68. § 3. is directed to be made upon complaint by any one of the overseers of the poor. And though the lat-

ter statute direct the magistrate upon such complaint and proof upon oath of the order for payment of maintenance, and nonpayment thereof to issue his warrant to apprehend the reputed father, yet it is proper for the justice to issue a summons in the first instance to the party charged to attend and show cause, &c.

number and value of the parishioners, according to the poor's rate as required by the act; and, therefore, considering S. not to have been legally continued or appointed guardian of the poor at the time, and that they could not regularly investigate any complaint of the kind not preferred by a regular parish officer, they refused to take the examination of M. B., for filiating her bastard, or to issue the summons to F. for disobeying the order of bastardy. — LORD ELLENBOROUGH C. J. The person making the application to the magistrate, being guardian of the poor of D. *de facto*, acting in that character, and recognized as such by the parish, and no objection being made by the general overseers of the poor to this person, making the complaint to the magistrates, as against one who usurped their authority, we do not think that the magistrates could enter, upon such an occasion, into the objection that he was not duly appointed guardian. As to the cases referred to touching certificates, requiring them to be signed by the full number of officers *de jure*, competent to bind the parish, they are very different. Where the parish is to be bound thereafter by the acts of its officers, it must be shown that they had a competent authority: but here S. did no act assuming to bind the parish, but only applied to the magistrates to take the examination of the woman and put the matter in a course of inquiry. Then as to the objection upon the late act, it is the general duty of magistrates, in cases of this sort, where the complaint is merely for non-payment of money, to issue a summons in the first instance, before they grant a warrant of apprehension, and it requires very strong words to take away the necessity of the summons. I remember a case some years ago where, though the words of an act authorizing the magistrate to issue his warrant for a purpose of this kind were very general, yet the Court held it to be the duty of the magistrate to issue his summons in the first instance. And I cannot think that the words here used are sufficiently strong to take away the power of issuing his summons. — BAYLEY J. The use of the summons is to give the party an opportunity of showing, if he can, that he has paid the money and obeyed the order, and to show that there is no ground for the complaint to authorize his apprehension. — PER CURIAM. Rule absolute.

VI. The Summons and Commitment.

An order of bastardy need not state that the party was summoned.

See next case.

An order of bastardy, whether made by two justices or at the Sessions, ought to state that the reputed father was summoned, and show the cause of the summons, and not

548. *Rex v. Hawkins*, T. T. 7 G. 1. *Poor Sett.* 127. — In the order of bastardy it was not said, that the defendant was summoned, or had notice, or was heard. — PER CURIAM: It is not requisite where the order is made by two justices; otherwise, if it had been originally made at Sessions.

549. *Rex v. Glegg*, M. T. 7 G. 1. 8 Mod. 3. — *Glegg* was by the order of two justices adjudged to be the putative father of three bastard children, and ordered to pay, &c., which order was confirmed on appeal to the Sessions; and both the orders being removed into the King's Bench, it was insisted in G.'s behalf, that the order made by the two justices was irregular, because it did not set forth that G. was duly summoned to appear before them; it only set forth that he had notice to appear, but did not show for what cause, and therefore was not a regular summons. — THE COURT was of opinion, that if G. was not summoned to appear,

showing for what cause, they might quash this order; for it is against the law of *England*, that a man should be impeached without notice to make his defence, and all inferior jurisdictions ought to show that they have proceeded according to that power which they have by law. — THE COURT ordered, that the parish should have time to show whether G. was regularly summoned to appear before the two justices who made the order. — And the order was afterwards affirmed.

550. *Rex v. Buckall*, *M. T.* 3 G. 2. 1 *Burr. K. B.* 261. — This was an order of bastardy made by two justices confirmed by an order of Sessions. — STRANGE objected, that it was appointed that an *attachment* should go against the defendant for having disobeyed a former order, and he submitted that the Court of Sessions have no authority to issue such process. — YATES, on the other side, observed, that although the word "*attachias*" was in the order, it was to be understood no more than a common *capias*; but admitting that it was, it is laid down in *Hawkins's Pleas of the Crown*, that every Court of Record may grant an attachment. — THE COURT, however, thought this was a good objection to the order; and it was accordingly quashed.

551. *Rex v. Cotton*, *T. T.* 6 & 7 G. 2. 1 *Sess. Cas.* 179. — An information was moved for against the defendant, who, with another justice, made an order of bastardy upon one F., without summoning him to appear before them to make his defence. Upon appeal to the Sessions he was acquitted, and put to great expences; which it was insisted was contrary to natural justice. — MR. JUSTICE PAGE: No man in an office can be supposed to be so ignorant as not to know it is against natural justice to convict a man without a summons: the examination ought to be so made that the truth may appear; and this must be by examining both sides, otherwise it is partial. The scandal, the expence, and the disorder in Mr. F.'s family, are things that ought to be considered: here was no taking by warrant, and therefore an action of false imprisonment would not lie; and this is the only method that can be used to punish the justice. — MR. JUSTICE PROBYN: The principal objection about a summons is right in law and in reason; possibly an action on the case might be framed; there may possibly have been only an error in judgment, and it is hard to grant an information. — MR. JUSTICE LEE: If this was strictly a conviction, against which no appeal lies, an information ought to be granted; but the matter is not so very strong in the case of orders. — And the rule was discharged.

552. *Rex v. Neal*, *E. T.* 8 G. 2. *MSS.* — Motion in the King's Bench for an information against the defendants, two justices of D., for making an order on one N. M., adjudging him to be the putative father of a bastard child without summoning him, and also for refusing to hear his witnesses. On showing cause, it appeared that he was summoned by a third justice, which THE COURT held to be sufficient. — LORD HARDWICKE C. J. If the party, being summoned, will not attend himself, there is no reason the justices should hear any defence made for him; for if that were allowed, no offender of this sort would appear; therefore the justices, in this case, acted right. And it is but as this Court does, when orders of bastardy are removed hither; for we never allow any exceptions to be taken to the order, unless the

merely set forth that he had notice to appear. Sed vide S. C. 1 *Stra.* 475. and *post*.

The justices cannot commit until default be made. *Ld. Raym.* 858.

The reputed father must be summoned before an order of filiation can be made; for without summons there can be no legal examination. See *Rex v. Clayton*, *ante*, pl. 546.

But the summons may be by a third justice.

S. C. *Annalley's Rep.* 112.

The Court will intend the party was summoned until the contrary appear.

Where a single woman having been delivered of a bastard child, was committed by one justice of the peace for refusing to answer enquiries as to who was the father of the child: Held, that the commitment was bad.

party attend in person (a), that the Court may take care of him, and make him indemnify the parish, if the order is good.

553. *Rex v. Clayton*, M. T. 43 G. 3. 3 T. R. 58. — An order of filiation was made without showing that the putative father was summoned, or had, in fact, appeared before the two magistrates. It was argued that the Court will intend that he was summoned, as nothing appeared to the contrary; and the case of *Rex v. Clegg* (b), *Rex v. Austin* (c), *Rex v. Venables* (d), *Rex v. Calder Navigation* (d), *Rex v. Guardians of Chichester* (e), and *Rex v. Bugworth* (g), were cited. — THE COURT said, the form of the order would have been better if it had followed the precedents, but that the cases cited sanction the omission.

554. *Ex parte Martin*, M. T. 7 G. 4. 6 B. & C. 80. — A writ of *habeas corpus* had been granted to bring up the body of M. A. M., who was confined in the house of correction at P. By the return it appeared that she was so confined pursuant to the following warrant, signed by one justice of the peace. "Whereas information and complaint have been made unto me, one of His Majesty's justices, &c., by E. G., clerk to the guardians of the poor of the city of C., that M. A. M., of the parish of P., in the county aforesaid, single woman, hath lately been delivered of a bastard child, in the said parish, which said child was likely to become chargeable to the said parish, and that she the said M. A. M. had refused, and did refuse to appear before one of His Majesty's justices of the peace for the said county, to be examined touching the father of the said child: and whereas the said M. A. M. having appeared before me pursuant to my summons, hath shown no cause why she should not be examined touching the father of the said bastard child, but hath refused and doth refuse to be so examined," &c. The warrant then required the keeper of the house of correction to receive M. A. M. into his custody, and her safely keep until she should submit to be examined touching the father of the said child. — ABBOTT C. J. I am of opinion that one justice has not power to compel this woman to be examined. A power to that effect is virtually given to two or more justices by the 18 *Eliz.* c. 3.; but the question is, Whether it be incidentally given to one by the 6 G. 2. c. 31.? It was thereby enacted, "That if any single woman shall be delivered of a bastard child which shall be chargeable, or likely to become chargeable to any parish, and shall in an examination to be taken in writing upon oath before any one or more justice or justices of the peace of any county, &c. charge (i.e. if the woman shall charge,) any person with having gotten her with child, the justice or justices may cause him to be apprehended." It is not necessary to infer from that enactment, that one justice has power to compel the woman to be examined, for that power was already given to two justices, and although one justice may act if the woman comes before him and charges any person with being the father of her child, that is very different from compelling her to answer interrogatories, and so to make such a charge. Nor does the proviso in the fourth section remove the difficulty. That is a negative, and

(a) See *vide ante*, *R. v. Upton Gray*, and *post*, *R. v. Price*, and *R. v. Gibson*.

(b) *Post*, pl. 610.

(c) 8 Mod. 309.

(d) 1 Stra. 630. 1 Ld. Ray. 1405.

(e) 3 T. R. 496.

(g) 2 T. R. 666.

if an affirmative was intended to be implied, then at all events the justice should have stated on the face of the warrant that a month had elapsed from the delivery of the woman before she was sent for in order to be examined. — She must therefore be discharged.

VII. *The Bond of Indemnity and Security.*

555. *Res v. Chaffey*, E. T. 2 Ann. Ld. Raym. 858. — An order was made by two justices of W. against the defendant for being the putative father of a bastard child. An objection was taken that it ordered the defendant to give security for payment of the sum by them imposed for the maintenance of the child, when it did not appear that the defendant had disobeyed the order in point of payment; and by 18 *Eliz. c. 3.* an order for security cannot be made till after contempt; and for this reason the order, as to this part of it, was quashed.

The justices cannot compel the putative father to give security until he has made default. 8. C. 3 Salk. 66.

556. *Hulland v. Malkin*, T. T. 33 & 34 G. 2. 2 Wils. 126. — Debt upon bond. The defendants craved oyer of the condition, which was, that if they should indemnify the plaintiff, &c. as to a bastard child, then the obligation to be void, otherwise, &c.; and then they pleaded that the child was an infant in the arms of its mother, and that while the child and mother were with them (which was four days), they took care of it, and provided for it every thing; but that the mother had taken away the child from them, and that the child had not since been delivered to them by plaintiff: *et hoc*, &c. The plaintiff replied, that it was true that the child was carried away by the mother, who for some time provided for it; but for replication said, that it afterwards became chargeable to the parish, and that he the plaintiff had been obliged to pay such charges to the parish, whereby he was damnified: *Et hoc*, &c. The defendant rejoined, that the child was an infant under seven years of age, and in the keeping of the mother, and that it was not in their power to take it from her and keep it, so as to indemnify the plaintiff. To this the plaintiff demurred. — The case was this: A. P. having charged the plaintiff with being the father of a bastard child, he was obliged to give bond to indemnify the parish; but in order to get rid of the child, and to be clear of the parish, he paid the defendants 14*l.*, in consideration whereof they entered into the said bond to indemnify the plaintiff against all damages, charges, &c. which he might be liable and put to on account of the said child. — Upon arguing this case THE WHOLE COURT were clearly of opinion that the plea was bad. They said, this was a general bond to indemnify the plaintiff as to the child against all the world; and they can plead nothing but one of these two things, either that the plaintiff hath not been damnified, or (in excuse) if he has been damnified, that he himself was the occasion thereof, neither of which they had done; the mother's taking away the child is no excuse at all. Moreover, they said, the replication had shown how the plaintiff was damnified; and the rejoinder in effect had admitted it, because it had not denied it. And they said, we need not in this case say, whether the father or the mother hath a right to have the child while under seven years of age, because the defendants have bound themselves to keep the plaintiff harmless against all the world. They have confessed in their plea that they had the child in their keeping, and why did they let the mother carry it away? it was the defendants' own

A bond given by a third person and to the reputed father of a bastard child, to save him from all charges respecting such child, is forfeited, if such father be called upon by the parish to maintain the child, although it was under seven years of age, and the mother took it from the care and keeping of the obligor.

fault, and cannot excuse them to the plaintiff. — Judgment for the plaintiff. — *N. B.* THE CHIEF JUSTICE said, he would give no opinion whether the father has any power over a child who is *nullius filius*: *Grotius* says truly, that the mother is the only certain parent; and an order of justices to remove the mother always removes the child.

The whole penalty of a bastardy bond may be paid into court.

557. *Brangwin v. Perrot*, *E. T.* 18 G. 3. 2 Bl. Rep. 1130. — GROSE moved for leave to pay 40*l.* (being the whole penalty of a bond to indemnify a parish against a bastard child) into Court, with costs. This was permitted (even where the penalty was to be relieved against) in the Courts of Law, before the statute of the 4 & 5 Ann. *Ireland's case*, 6 Mod. 101. — WALKER showed for cause, that this was an action for a single breach of the bond, on which we are entitled to recover; after which the penalty shall still remain in full force to answer subsequent breaches, as they may arise *in infinitum*. — *Sed non allocatur*: and by DE GREY C. J. This is really so plain a case, that one knows not what to say to make it clearer. The bond ascertains the damage by consent of both parties. If, therefore, the defendant pays the plaintiff the whole stated damages, what can he desire more? — GOULD, BLACKSTONE, and NARES Js. of the same opinion. — Rule absolute.

In debt upon a bond conditioned for an indemnification, the defendant ought not to be held to bail for the penalty, but only for the amount of the damage incurred.

558. *Kirk v. Strickland*, *M. T.* 21 G. 3. Doug. 449. — Motion, for rule to show cause, why the defendant should not be discharged upon filing common bail. The action was debt upon bond conditioned for the indemnification of a parish against a bastard child. The penalty in the bond was 50*l.*, and the plaintiff, in his *affidavit* for holding the defendant to bail, had sworn that he was justly indebted to him in that sum; but the defendant, in the *affidavit* on which this motion was grounded, swore that only 3*l.* and some odd shillings were really due. — THE COURT said, the conduct of the plaintiff was altogether unjustifiable, and that he was liable to an action. That, in the case of a bond conditioned for the performance of a promise of marriage, and in some other instances, the penalty is the real debt; but, in other cases, the bail could only be taken for the sum to which the plaintiff would be entitled in damages for the breach of the condition. At first, however, they seemed to think they could not relieve the defendant upon this summary application, it having been an uniform rule not to go into the merits upon such a motion, but to take the matter as it stood upon the *affidavit* to hold to bail; but, at last, they granted the rule, declaring that they were persuaded the plaintiff would not venture to show cause against it.

If the putative father of a bastard agree to indemnify the parish, they may demand any security they think proper.

559. *Dickenson v. Brown*, *N. P. M. T.* 35 G. 3. Peake, *N. P.* 234. — The plaintiff was apprehended under a warrant of bastardy, and went to the vestry, where he agreed to give a bond of indemnity with two sureties; but one of the sureties not executing the bond, he was again apprehended under the same warrant. — LORD KENTON: The warrant was not in this case fully executed; the parish officers had a right to have any security they required, if the business was settled in that way. This was no hardship on the plaintiff; for he was not obliged to enter into any *such security*, but might enter into a recognizance to appear at Sessions, and abide such order as they should make.

The statute 6 G. 2. c. 31.

560. *Cole v. Gower*, *H. T.* 45 G. 3. 6 East, 110. — The plaintiffs declared on a promissory note made by defendants, whereby they

promised two months after date to pay to the plaintiffs, by the names and additions of Messrs. Cole, &c. the churchwardens and overseers of the poor of the parish of P., or order, 6*l*. The defendants pleaded *non assumpsit* as to all but 5*l*., and a tender of that sum. At the trial before Grose a verdict was found for the defendants on the plea of tender, and for the plaintiffs on the general issue with 20*s*. damages; subject to the opinion of the Court on the following case: On the 22d of January 1803, one M. T., a single woman, swore a bastard child (of which she was then pregnant) to G., one of the defendants, who was apprehended under a warrant in that behalf on the 7th of April following. Shortly after his arrest, and before he had been carried before any magistrate, he offered to compromise the affair with the parish, and to pay the parish officers 20*l*. if they would give him time; and they agreed to take the 20*l*. by instalments secured by a sufficient person. G. was thereupon released out of custody at his request, that he might find such surety; promising to meet the parish officers and settle the business next day; and he accordingly met them on the 8th of April, together with the other defendant P., whom G. offered as his surety; when it was finally agreed between all the parties that the 20*l*. should be paid by three instalments, to be secured by three joint promissory notes of the defendants, to bear date respectively the 8th of April. The first (whereon the present action is brought) at two months after date for 6*l*.; the second at twelve months for 7*l*.; the third at twenty-four months for 7*l*. The three notes were accordingly prepared by P., who also prepared the memorandum after mentioned. Before the notes and the memorandum were signed, P. (in the presence and hearing of G.) asked the parish-officers whether they expected that the notes should be paid in case the child died; who answered, that without a doubt it would be expected that the money should be paid in all events. Whereupon the defendants signed the promissory notes, and delivered them to the plaintiff, and he signed the following memorandum on the part of the parish, and delivered it over to G.; which memorandum, dated 8th April 1803, stated (in substance) that "Whereas M. T., had by her voluntary examination taken in writing upon oath before E. T., a magistrate of the county, declared herself to be with child, which was likely to be born a bastard, and to be chargeable to the parish of P., and had charged W. G. with being the father, &c. And whereas the said W. G. and J. P. had given to the parish-officers their joint notes of hand for the payment of 20*l*. by instalments, to indemnify the parish from the costs and charges of maintaining and providing for the child, of which M. T. was so enceinte. Therefore he, C., one of the churchwardens, &c. on behalf of himself and the rest of the inhabitants of the parish, did thereby undertake and agree to provide for and maintain such child, &c. and to indemnify W. G. from maintaining the same, and all costs, charges, and expences which he might sustain on account thereof." The first note became due on the 11th of June 1803, and on the 17th M. T. the pauper was delivered of a still-born bastard child in the parish of P. And the defendants being called upon to discharge their first note, tendered 5*l*. in part payment of it, but refused to pay the remaining 20*s*., urging that 5*l*. was the full extent to which the parish had been damaged. The defend-

only authorizes parish officers to take security from the putative father of a bastard child to indemnify the parish; and therefore where they had taken a promissory note absolute for a sum certain, to which there was a plea of tender of a lesser sum as the amount of the charge actually sustained by the parish, which tender was found for the defendant: Held, that the plaintiffs could not recover further upon the note.

ants at the trial proved their plea of tender of the 5*l.*; and the plaintiffs did not make out in evidence that the parish had been damnified to above the amount of 5*l.*, but, on the contrary, that they had only expended 3*l.* 14*s.* by reason of the premises. The question for the opinion of the Court was, Whether the plaintiffs were entitled to recover? — LORD ELLENBOROUGH C.J. I am of opinion that the plaintiffs are not entitled to recover beyond the sum paid into Court, whether considering the contract as void upon principles of public policy, or considering it with relation to the individuals with whom it was made, as a contract for gain or loss by persons clothed with a public trust upon the subject-matter of their trust, and giving them an interest in the mal-execution of it. It is a shocking consideration, that by means of such a security as this the parish-officers, who have a public duty imposed upon them to take care that the father shall make a proper provision for the maintenance of the child, acquire an interest that the child should live as short a time as possible. In the case even of a private trustee the Court of Chancery will not permit him to become a purchaser of an estate which he is entrusted to sell, because it gives him an interest to lessen the purchase-money. Considering the security as given to the parish-officers only in their individual capacity, it is giving them a temptation to deal with negligence at least in that most important trust, the care of children of tender age, which is committed to them. But if made to them in their representative character, and the parish were to receive the benefit of the money when recovered, which was the manifest intention of the parties, it is placing parish officers in a situation which the legislature did not mean to do, and which public policy forbids. The law did not mean to make this a matter of speculation of loss or gain to the parish: it has said that the security shall be given to them in order to indemnify the parish. I therefore consider the law as having spoken upon the subject; and it having said that the security shall be taken for an indemnity, it has excluded every other consideration. The parish-officers are not to speculate, but to take the security as a matter of public duty in the form prescribed by the act: and taking it in the form they have done is contrary both to the direct letter and to the general policy of the law. — GROSZ J. There are two ways of considering this security, the one legal, the other illegal. The legal way of considering it is in conformity to the directions of the act of G. 2. as a note of indemnity, and as such it would be proper and legal; but in that view of it the tender made was more than enough to cover the expences incurred. In the other mode of considering it as a security for a certain sum payable at all events, it is illegal. The persons to whom it was given are the parish-officers, upon whom a duty is thrown by law, and authority given to them to take security for indemnifying the parish against the charge of maintaining bastard children. They cannot, therefore, convert a power given them for the mere purpose of indemnity into a matter of bargaining and speculation upon the life and death of the child, thereby making it the interest of the parish to get rid of the child as soon as possible. And though nothing of that sort appear in the case before the Court, yet out of court such things have been heard of, and it is obvious that they may happen. It is, however, enough to say, that the taking of an absolute security is against the policy of the law,

which meant only to secure an indemnity to the parish. Parish-officers ought to pursue the statute, and not to lay a wager in effect on the continuance of the child's life. The practice leads to public inconvenience, and is contrary to their duty. The power given them by the statute may in this manner be converted into an engine of oppression, by their enforcing the security taken for the whole sum before the whole expence has been incurred by the parish. — LAWRENCE J. I agree with the rest of the Court upon the construction of the statute, though I confess I have had some doubt upon the inexpediency of the practice which has prevailed; for it may often happen that the putative father may be able to procure friends to enter into security for him to a certain amount, who would not undertake to indemnify the parish to an indefinite extent: and they may thus be left without any other security than the precarious future responsibility of the putative father himself. The statute, however, certainly meant merely to indemnify the parish, and not to create a speculation of loss or profit to them upon the life or death of the child, and the parish-officers should have no temptation to be careless in the execution of their trust. And it must be admitted that they will not have the same interest to take care of the child, for whose maintenance they have received security for a sum certain, as if it were taken only for their indemnity. Upon the whole, therefore, weighing the inconveniences on either side, it is better to abide by the strict letter of the statute. — LE BLANC J. I agree with my brothers upon the ground of public policy. The legislature have marked out to the parish-officers what line they are to pursue in taking the required security, and their duty towards the children. The parish-officers are to call upon the father to give security for indemnifying the parish against the charge of maintaining the child, whom they are bound to see provided for and taken care of: and the father is to be committed if he do not give such security, or enter into recognizance to appear at the next Quarter Sessions and abide their order. It is said that the father might enter into such a contract with any individual; but we must distinguish this from a contract with private individuals: it is a contract with these plaintiffs as parish officers, and must, therefore, be construed with reference to the statute, which directs the security to be taken; the object of which was the indemnity of the parishioners against the burthen of maintaining the child. Now that object cannot be attained by taking an absolute security in the first instance, so well as by taking it as an indemnity: for if the money be received immediately, the benefit is to those persons only who are then living in the parish, while the burthen may be thrown on future parishioners. Whereas the act meant that those who were to bear the burthen should have the benefit of the indemnity. Besides which, by taking an absolute security, a temptation is holden out to the parish-officers to neglect their duty. On these grounds I agree that the *postea* should be delivered to the defendants. — *Postea* to the defendants.

561. *Middleham v. Bellerby*, E. T. 53 G.3. 1 M. & S. 310. — Debt on bond. The declaration set forth the condition of the bond, which was for payment by the defendant to the plaintiff, then overseer, and to the overseer for the time being, of the township of *Shadwell*, in the parish of *Thorner*, in the county of *York*,

Where the putative father of a bastard child gave a voluntary bond, and not under the com-

pulsion of stat. 6 G. 2. c. 31. to the parish-officers, conditioned for the payment of a sum certain every three months until the child should be deemed capable of providing for herself: Held, that such bond was good and the condition sufficiently certain.

(a) *Ante*, pl. 560.

The obligee in a bastardy-bond after the bond had been forfeited, became bankrupt and obtained his certificate: Held, that the parish-officers were not thereby precluded from recovering upon the bond further expenses incurred subsequent to the bankruptcy.

of the sum of 1*l*. 1*s*. every three months, for so long as and until a certain bastard-child (of which the defendant was recited to be the putative father,) should be deemed capable of providing for herself. The breach assigned was in not paying, &c. to the plaintiff, or the overseer for the time being, according to the terms of the condition, although the said child was still living, and not capable or deemed capable of providing for herself. — *Lord ELLENBOROUGH C. J.* If a duty be imposed by statute, the parties who are called upon to execute that duty must comply with its provisions; and, therefore, if the defendant had been apprehended under the statute, and had given this bond in order to relieve himself from commitment, there might have been much weight in the argument; but the argument does not apply where the parties are not acting under the statute. This does not appear to be any thing more than a voluntary obligation entered into by the defendant, with the object of providing for the maintenance of his child, and if we do not find that it is contrary to the general policy of the law, which was the case of *Cole v. Gower* (a), I see no reason why it should not have effect. The defendant still remains liable to indemnify the parish. Then, looking to the obligation, it amounts to this, that the putative father of an illegitimate child is willing to pay to the parish-officers a reasonable sum every three months, until his child is deemed capable of providing for herself. I see nothing in this against general policy, and I have before said it does not seem to me to be a case within the statute. Then the words “deemed capable” must be intended to mean until she shall be so deemed by a jury, which is sufficiently certain. — *L. BLANC J.* If the party is brought before a magistrate, then the statute directs what shall be done, but here the party acts without any compulsion. — *PER CURIAM*: Judgment for the plaintiff.

562. *Overseers of St. Martin-in-the-Fields v. Warren, E. T.* 58 G. 3. 1 B. & A. 491. — Debt on bond, dated 6th of July 1812. Plea, that defendant became bankrupt on the 28th of November 1815, and that the cause of action accrued before he so became bankrupt, on which issue was joined. The cause came on to be tried before Mr. Justice Bayley, when a verdict was found for the plaintiffs, and the damages were by the jury assessed at the sum of 1*l*. 16*s*., subject to the opinion of the Court on the following case: The bond was executed by the defendant in the penal sum of 100*l*. subject to a certain condition, whereby, after reciting that *Ursula Ladd*, single woman, did, in an examination, taken in writing, upon oath, before R. B. Esq., one of His Majesty's justices of the peace, &c., acting, &c., declare that she was on the 18th of May then last delivered in the *Bayswater* hospital (licensed for the reception of pregnant women,) of a male bastard-child, baptized *William*, yet living, and then chargeable to the said parish of St. M., and that the therein-mentioned J. L. was the true and only father thereof, and no man else, and that the aforesaid then churchwardens and overseers of the poor had requested security to indemnify their said parish of and from the maintenance and provision of the said male bastard-child, and that the therein-mentioned J. L. and the said defendant and F. W. B. had undertaken to be security, and to save harmless and keep indemnified the said parish of and from the maintenance and provision of the said child, and had requested and desired the said then churchwardens

and overseers of the poor to accept and take their bond for the performance thereof. It was declared that if the said *J. E.* and the said defendant and *F. W. B.*, or either of them, their or either of their heirs, executors, and administrators, did and should from time to time, and at all times thereafter, well and sufficiently save, defend, and keep harmless and indemnified the said then churchwardens, &c., and their successors the churchwardens, &c. for the time being, as also all other the inhabitants of the said parish from and against all and all manner of costs, charges, taxes, rates, assessments, and expences whatsoever, which they, either, or any of them should or might happen to bear, pay, sustain, or be put unto, for or by reason or means or on account of the maintenance and provision of the said child, and of and from all actions, &c. touching or concerning the same, then the said obligation should be void, &c. The defendant proved that a commission of bankruptcy issued against him on the 28th of *November* 1815, and that the bond had been forfeited, and the condition of the bond had been broken before that time, and that his certificate was allowed on the 23d of *February* 1816. It was proved by the plaintiffs that they had expended the sum of 14*l.* 16*s.* in the maintenance of the child in question, from the said 28th of *November* 1815 to the 5th of *May* 1817. The question for the opinion of the Court is, Whether this ground of action is barred by the bankruptcy and certificate of the defendant? If the Court shall be of opinion that the plaintiffs are entitled to recover, the verdict is to stand; otherwise a nonsuit is to be entered for the defendant. — LORD ELLENBOROUGH C. J. This was a debt upon a contingency, and one too in its nature wholly incapable of valuation, and therefore, in my opinion, not provable under the commission. The case of an annuity is an exception to the general rule; there, indeed, the courts have omitted the amount of the contingent debt to be valued and proved; but there you only estimate the duration of life: here the expences for which the party is liable may vary in consequence of the sickness of the child. The contingency here is not only the duration of life, but on the continuance of health; it is subjected to every accident of human life, and is a most precarious and uncertain event possible; how then could its value be estimated, so as to be proved under the commission? In *Goddard v. Vander Heyden* (a) Lord C. J. *De Grey* says, that debts payable on a contingency, which may possibly never happen, cannot be proved under a commission of bankruptcy. But independently of this, I think that there is considerable weight out of the argument raised out of *Cole v. Gower*. (b) The permitting of this debt to be proved under the commission would certainly have a tendency to corrupt the parish-officers, inasmuch as it would give them an interest in the abridgment of the life of the illegitimate child committed to their care. It is said that that case has been shaken by a late decision in the Court of Common Pleas. I shall, however, require much argument to convince me that that case has been well decided. At present I adhere to the opinion I expressed in *Cole v. Gower*. — BAYLEY J. I am of the same opinion on both grounds. There is much subtlety in considering the penalty as the debt, where the bond is forfeited; but in those cases you prove only the real value of the debt, and there is no case where the proof of a debt, perfectly uncertain in its value, has

(a) *S. Wilson*, 370.

(b) *Ante*, pl. 560.

been admitted. This is a debt wholly incapable of valuation; its amount depends on the life of the child, the continuance of its health, and the ability of the father to maintain it. On the other ground of public policy, I think that this debt could not be proved under the commission: we are to look at the statute; it permits a bond to be taken for the purpose of indemnifying the parish. The payment of a gross sum, however, is not an indemnity, and the hazard pointed out by Lord *Ellenborough* immediately occurs, that in such cases it becomes the interest of the parish-officers to be negligent of the child. As to the case cited from the Common Pleas, I doubt its authority as far as it in any respect impugns the doctrine laid down by the Court in *Cole v. Gower*. — *ABBOTT J.* I am clearly of opinion on the first ground, that the debt, which it was impossible to value, could not be proved under the commission. On the second ground, I fully accede to the doctrine laid down by this Court in the case of *Cole v. Gower*. — *HOLROYD J.* I am of the same opinion, that this debt could not be proved. The only thing provable under the commission, where the penalty is considered as the debt, is the amount of the injury sustained by the breach of the condition of the bond. In a case, therefore, where this cannot be estimated, you cannot prove under the commission. I am also of opinion that there is much weight in the objection on the other ground. — Judgment for plaintiff.

VIII. The Form of the Order of Bastardy.

The order must state that the child was born in the parish.

Same resolution
Rex v. Childers,

An order of maintenance to pay two-pence a week is bad for the smallness of the sum.

An order of bastardy directing the reputed father to maintain the child until it was 12 years old is bad.
1 Mod. 20.
2 Keb. 575.

An order that the reputed father shall pay so much to the midwife, is bad.
An order to pay "seven shillings a

563. *Anonymous*, *H. T. 4 Car. 2. Styles*, 368. — *PER CURIAM*: It must appear by the order for maintaining a bastard child, that it was born in that parish to which the money was ordered to be paid.

E. T. 3 G. 2. Post, pl. 583. and *Rex v. Butcher*, *post*, pl. 585.

564. *Rex v. Perkasse*, *E. T. 20 Car. 2. 1 Sid.* 363. — It was moved to quash an order of maintenance made at the Sessions. The objection was, that it was unreasonable in respect of the smallness of the sum, being only two-pence a week for the maintenance of the child. — *THE COURT* were of opinion that it should be quashed.

565. *Burwell's case*, *M. T. 21 Car. 2. 1 Vent.* 48. — Upon complaint to two justices about a bastard child, they, by 18 *Eliz. c. 3.* ordered one *R.* to keep the child; but on this order being vacated, another was made at Sessions, adjudging *B.* to be the reputed father, and ordering him to pay so much a week to the parish, until the child was 12 years old. — This order was removed into the King's Bench; and *THE COURT* held it insufficient, because it was, that he should pay the parish so much a week until the child was twelve years old, whereas the father might take it away when he pleased; but it ought to have been, that he should allow so much a week so long as it should be chargeable to the parish.

566. *Rex v. Sherman*, *E. T. 24 Car. 2. Vent.* 210. — Order of justices quashed, because the father was directed to pay 4s. to the midwife, whereas it did not appear that the parish had procured her, or were at any charge with respect to her; and because the putative father was ordered to pay 7s. a week until the child should be able to get its living by working. — But *THE COURT* held 7s. a week excessive; and *TWISDEN J.* observed, that it

should have been for no longer time than the child should be chargeable to the parish; for that they could not order the 7s. a week to be paid until it should be able to get its living, as perhaps the father might choose to take it away and maintain it himself, which he might do whenever he pleased. — The order was accordingly quashed.

567. *Rex v. Johnson*, M. T. 3 Jac. 2. Comb. 69. — An exception was taken to an order for keeping a bastard child, because it made provision for the maintenance of the child "till it shall be no longer chargeable," &c.; whereas by the statute it should be "till the child shall be able to get its own living;" but the order was confirmed.

568. *Rex v. Colbert*, E. T. 1 W. & M. Comb. 103. — An order made by the justices of peace was quashed, because it was made on an affidavit brought to them, without the examination of witnesses; and secondly, because the defendant was ordered to pay a sum in gross, for the charges that the parish had been at, &c. without showing how or for what.

569. *Hutton's case*, H. T. 8 W. 3. 2 Salk. 477. — To an order made by five justices to maintain a bastard child; it was objected, that the complaint is not said to have been made by any parish, or officers of any parish, but only of a town, which may include many parishes; Secondly, That instead of five justices, the order should have been made by the two next. — The exceptions were over-ruled.

570. *Rex v. Barebaker*, E. T. 9 W. 3. 2 Salk. 478. — Order to pay 3s. per week, for the maintenance of his bastard child "till it attains the age of 14 years," was held bad; for the justices have no authority but to indemnify the parish, by obliging him to maintain the child "as long as it shall be chargeable to the parish."

571. *Rex v. Matthews*, H. T. 8 W. 3. 2 Salk. 475. — MONTAGUE moved to quash an order for maintaining a bastard child: First, Because it was not said the child was likely to become chargeable: And, secondly, The defendant was ordered to pay 1s. 6d. per week indefinitely, without limiting any certain time. — SHOWER answered, that no order relating to a bastard child can be quashed, except the reputed father be present in court, *quod Curia concessit*; however this being a hard case, a rule was made to show cause; and being stirred again the next term, the Court would not quash it till the reputed father came into court; and the first exception was over-ruled; for it is self-evident that every bastard child is likely to become chargeable.

572. *Rex v. Weston*, T. T. 4 Ann. Salk. 122. — The defendant being adjudged by two justices to be the father of a bastard child, was ordered to pay so much weekly to the *overseers of the poor*. It was objected, that it ought to have been ordered to be paid to the *inhabitants of the parish* generally. — But THE COURT refused to quash the order upon that exception, because, as before the institution of overseers, the justices might order the money to be paid to two or three of the inhabitants, so now they may to the overseers.

573. *Rex v. Weston*, T. T. 4 Ann. MSS. — Two justices made an order upon one W., adjudging him to be the reputed father of a bastard child, and ordered him to pay so much weekly for its maintenance, viz. every Monday. It was objected, that they had

week," is excessive.

See *Rex v. Selbourn*, 9 Show. 132. and *Rex v. Thomas*, 2 Show. 139.

An order "till no longer chargeable," is good.

Order of bastardy cannot be made on affidavit only.

Order of bastardy by five justices for the relief of a town, is good.

An order "till the child attains the age of fourteen," is bad.
1 Vent. 210.
1 Mod. 20.
1 Sid. 222.

Upon motion to quash an order of bastardy, the reputed father must be present in court.
6 Mod. 180.
1 Bl. Rep. 190.

An order that the reputed father shall pay to "the overseers," is good.
S. C. Sett. & Rem. 155.
Ld. Raym. 1197.

An order may direct payment on a particular day weekly.

gone beyond the power given them in the statute; for computing the time from the making of this order, the week was not up on the *Monday*. But it was ruled in this case, that justices of the peace may order the payment upon a particular day weekly, even if the first week from making the order should not be complete on that day.

An order of bastardy by two justices, saying, "We doth adjudge," &c. is bad.

574. *Rex v. Weston*, T. T. 4 Ann. 2 Ld. Raym. 1198. — Two justices made an order of bastardy, and after the recital, and when it came to the adjudication it was, "We the said justices doth adjudge," instead of *do* adjudge, the singular number for the plural: and after this case had depended two terms on this objection, and having been several times staid, and the record in the case of *Rex v. Tulwood* examined, THE COURT, on this objection, quashed the order: and afterwards the same justices made another order, with the very same fault in it, viz. *doth* adjudge; and it was quashed.

An order of bastardy must state that the child was born in the parish. S. C. Sett. & Rem. 38. See *ante*.

575. *Rex v. Cuddington (a)*, E. T. 9 Ann. MSS. — Two justices made an order on the reputed father of a bastard child, that he should pay so much weekly and every week to the overseers of the poor of C., "until the said child should be able to gain its livelihood." The order also omitted to state that this bastard child was born in the parish. And on its being removed into the King's Bench, and exception taken, it was quashed.

An order to pay "till eight years old," is bad. 1 Sess. Cas. 41. Cas. of S. 64.

576. *Smith's case*, E. T. *Poor's Sett.* 64. — To an order to pay 1s. a week "till the child is eight years old," it was objected, that it ought to be "as long as the child is chargeable;" for possibly he may gain a settlement, or a person may give him an estate, or the father may take him. — PER CURIAM: A remote possibility! As to the father's taking him, he ought to have done it at first; and by suffering the order to be made, it shall be deemed a refusal in law: beside, he shall not be then suffered; he may sell him, or make away with him, as too often happens.

An order to pay money disbursed, without saying by whom, is good. S. C. Sett. & Rem. 40.

577. *Rex v. Smith*, H. T. 11. Ann. MSS. — Two justices made an order upon S. as the reputed father of a bastard child, to pay 2*l.* for money disbursed, but did not say by whom. — PER CURIAM: It is necessarily intended by the churchwardens.

To pay "nine pounds in gross, and so much weekly," is good. 1 Vent. 121.

578. *Rex v. Odam*, M. T. 12 Ann. Salk. 124. — An order of bastardy was made for the defendant to pay 9*l.* in gross immediately upon sight of the order, and after that so much weekly; and it was held good: for by the statute the justices are to make order for relief of the parish, and keeping of the child, by payment of money weekly, or other sustentation, and this might be only indemnifying the parish for money laid out before the reputed father could be found.

The order must state the sex or name of the bastard.

579. *Rex v. England*, H. T. 8 G. 1. Str. 503. — An order of bastardy was made by two justices; and it was quashed, because the sex of the child, or its name, was not mentioned in it.

The order must adjudge in what parish the child was born.

580. *Rex v. Godfrey*, E. T. 10 G. 1. Ld. Raym. 1363. — An order made upon the defendant to maintain a bastard child was quashed, because, though in the complaint it was alleged that the child was born in the parish of H., yet there was no adjudication

(a) See *Rex v. Sweet*, *ante*, pl. 536.

by the justices, nor any words of the justices from whence it could be collected in what parish the child was born.

S. C. 1822.
Cas. 292.
Sca. & Rem. 82.
1 Bar. K. B. 326.

Str. 437. 1

581. *Rex v. Mitford, M. T.* 10 G. 1. *Cas. Sett.* 150. — Motion to quash an order of bastardy, because it was not said that the child was chargeable to *the parish*, but to a *hamlet*. — *PER CURIAM*: If it was a hamlet that maintained its own poor, it had been good; but this not appearing, it was quashed.

An order describing the child as chargeable to a *hamlet*, is bad. See *ante*.

582. *Rex v. Street, M. T.* 1 G. 2. 2 *Str.* 788. — An order of bastardy was made to pay so much weekly till the child was nine years old, if it should so long live: and allowed to be a good order, because it cannot be intended able to provide for itself sooner.

An order of maintenance till the child is nine years old, is good.

583. *Rex v. Childers, E. T.* 3 G. 2. 1 *Bar. K. B.* 326. — On a rule to show cause why an order of two justices for the maintenance of a bastard child, and an order of Sessions confirming the same, should not be quashed, it was objected that it was not directly adjudged that the child was born in the parish of *S.*, and yet the order requires the defendant to pay the sum of 2*l.* 5*s.* to the churchwardens of that parish to reimburse them. It was answered, that it does sufficiently appear in the order that the child was born there; for it adjudges that the defendant should pay this sum for the charges which "the parish of *S.*" were at upon account of the woman's lying-in there. — But THE COURT said, that they could not allow of inferences to give the justices jurisdiction; and accordingly quashed both the orders.

An order requiring the father to pay so much to the parish, is not a sufficient adjudication that the child was born in such parish. See *Rex v. Godfrey, supra*, and *Rex v. Hexham, infra*.

584. *Rex v. Hexham, H. T.* 5 G. 2. *MSS.* — Two justices made an order on the defendants, that they should maintain a bastard child until the mother should be able to provide for it. The mother not being able to keep it, the father not being known, and the child being likely to perish, *DRAPER* moved to quash this order, because it did not appear on oath that the child was born in the parish of *H.*; neither had the justices made any *adjudication* of it in the order. — The order was quashed at the end of the term, no cause being shown.

The justices in an order of bastardy, must expressly adjudge that such child was born in the parish.

585. *Rex v. Butcher, T. T.* 7 G. 1. 1 *Str.* 437. — An order of bastardy run in this form: "We, *A* and *B*, two justices of the "borough of *L.*, residing within the limits where the parish- "church is, within which parish the child was born, do, &c." It was objected, that it did not appear by their order that the child was born in the parish to which the relief is ordered; for that it only averred that the justices resided in the parish where the child was born, but that that might not be the same parish to which the relief was given: and for this fault the order was quashed. In the case of *Rex v. Childers (a)*, an order was quashed for not showing that the child was born in the parish to which the relief was ordered.

An order of bastardy must show that the child was born in the parish to which the relief is ordered. *Salk.* 474. 1 *Bar. K. B.* 326.

(a) *Ante*, pl. 583.

586. *Rex v. Willey, M. T.* 8 G. 2. *MSS.* — An order upon the defendant, adjudging him to be the father of a bastard child begotten on the body of *A. P.*, required the mother to maintain the child till seven years old, and ordered the defendant to pay 1*s.* a week during that time, and at the end of the term to pay to the overseers of the poor of *B.*, (where the child was chargeable) the sum of 3*l.* to bind the child apprentice. — *PER CURIAM*: The

The reputed father cannot be ordered to pay a gross sum at a future day for the purpose of binding the child out ap-

prentice.
See Comb. 448.
S. P. Reg. v.
Atkins.
11 Mod. 172.

The birth must
be *adjudged* to
be within the
parish to which
relief is ordered.

To wit, *liberty*
of the Tower
Hamlets,
London, in an
order of bas-
tardy, is suffi-
cient without
saying in what
county.

To pay for relief
of the governors,
&c. bad.
S. C. 2 Sess.
Cas. 195.
S. C. 1 Wils. 35.

The justices
may order the
payment of a
sum in gross.
1 Sid. 326.
1 Salk. 124.
S. C. Comyns,
97.

(b) See vide
Rex v. Pitts,
post, pl. 593.

Justices have authority to order the father to pay a gross sum for the expence of the woman lying-in: for this is for the immediate indemnity of the parish. But it has been often determined, that they cannot direct a sum of money to be paid at a future day for what, perhaps, may never be necessary; and if the order were good in all other points, yet it must be quashed *quoad* this. But the order set forth, that complaint was made that the child was born within the parish of B., and the justices adjudged that the child had become chargeable there; an objection was made, that they had not *adjudged* that the child was born within the parish.—*PER CURIAM*: The order is bad *in toto* for this fault. The birth is the foundation of the jurisdiction, and this must be directly adjudged; the complaint might be false; and for what appears, the child might be chargeable to the parish only as a foundling not born there. We cannot take orders by intendment. If justices exercise a jurisdiction, they must show themselves entitled to it.

587. *Rex v. Messenger, E. T. 8 G. 2. MSS.*—Two justices of the liberty of the Tower of London made an order on the 18 *Eliz. c. 3.*, adjudging the defendant to be the reputed father of a bastard child. The Sessions, on appeal, confirmed the order.—*ABNEY* moved to quash it, because it did not appear either in the original order, or in that of the Sessions, in what county the *liberty of the Tower* was, that the party might know where to appeal; but it is only in the margin, "To wit, liberty of the Tower of London."—*CLARKE*, in support of the order, said, the liberty of the Tower of London is a distinct liberty, and in all respects the same, as to the present case, as a county. It has a separate commission of the peace, officers of its own, and Quarter Sessions; and the 3 *Car. 1. c. 4.* referring to the 18 *Eliz. c. 3.* gives justices of a liberty the same jurisdiction as justices of a county, which is still plainer from 6 *G. 2. c. 31.*—*LORD HARDWICKE C. J.* An express appeal is not directed by the 18 *Eliz. c. 3.*, but arises from the construction of the act; and I do not know whether the want of an averment in what county the liberty is, be an exception on that statute; however, that is fully cleared up by 3 *Car. 1. c. 6.*, so that as to this exception the original order is good.—*THE COURT* agreed, and further said, that the reason why the county should be in the margin is to show that the fact arose in the county in which the justices have jurisdiction, and not that the party may know where to appeal.

588. *Rex v. Howlett, E. T. 13 G. 2. MSS.*—An order adjudging H. the father of a bastard child, and ordering him to maintain it "for the relief of the governor and guardian for the poor of C.;" and for not saying "for the relief of the poor," it was quashed.

589. *Rex v. Gravesend, E. T. 15 G. 2. MSS.*—Two exceptions were taken to an order of two justices concerning a bastard. First, That it is no otherwise affirmed that the child was born at G. than by a "Whereas," which is recital only. (b)—Secondly, That the reputed father is ordered to pay a sum in gross for maintenance and other incident charges.—*PER CURIAM*: The whole order is the words of the justices, and in this case a sufficient adjudication of the fact. As to the other objection, if it had been for maintenance only, it would have been too general;

but as it is for incident charges too, it is good, and like the case of *Rex v. Odam*. (a)

(a) *Ante*, pl. 578.

590. *Rex v. Moravia* (b), E. T. 15 G. 2. MSS. — Two exceptions were taken to an order of bastardy. First, It recited that the child was *baptized* in the parish, and did not adjudge that it was *born* there. — Secondly, The justices adjudge 36*l.* to be paid, part whereof had already been paid for the maintenance of the child and other incident charges and expences. — But those exceptions were over-ruled: for, *PER CURIAM*, the provision of the statute of 18 *Eliz. c. 3.* is, that care shall be taken to relieve the parish where the child was born, and for that purpose the justices are to make provision according to their discretion; therefore it is necessary that it should appear in what parish the child was born, their jurisdictions arising from thence: and further, they are to charge the reputed father or mother for the maintenance of the child; and as the order says, she was delivered of a child *baptized* in the parish, that by a reasonable construction may be taken to be the place of the birth of the child: and as to its being a recital, that is sufficient; for in orders of removal it is, "*Whereas upon complaint,*" and that is looked upon as affirming a fact done; so "whereas such a child was baptized in such a parish," is a sufficient affirmation of the fact. (c) As to the 36*l.* for maintenance and other incident charges, these words "*other incident charges*" must be incident to the maintenance; and the rather, as a part thereof is already paid. — WRIGHT J., said, that at first he was of a different opinion, and thought the words "*incident charges*" extremely general; but on looking into it, he found there were orders as general as this is. — The order was confirmed.

Adjudication that the child was baptized in the parish, and that 36*l.* be paid, part whereof has been already expended for maintenance of the child and other incidental charges, held good.

(b) See *Rex v. Sweet, ante*, pl. 536.

(c) See *vide Rex v. Pitts, post*, pl. 593.

591. *Rex v. Fox*, T. T. 29 & 30 G. 2. EDITOR'S MSS. — An order of bastardy was made on the defendant to the following effect, viz. "The order of us, L. and D., two justices, &c. residing near to the parish of H., concerning a male bastard child of E. G. born in the said parish of H. First, upon due examination and proof, we do adjudge J. F. is the putative father, who had notice of the time and place of examination, &c.; we therefore do order, &c. as well for the relief of the said parish of H. as for the maintenance of the said child, that the said J. F. do pay to the said churchwardens and overseers of H. the sum of," &c. On this order being removed into the King's Bench, one objection was, that it is not adjudged that this child was born in the parish of H., but only so said in the title of the order. It was contended that this being an order of justices of the peace, the same precision is not necessary as in indictments or convictions. The two statutes relative to this matter are 18 *Eliz. c. 3.* and 6 G. 2. c. 31. The principal objects of both statutes are the indemnity of the parish, the maintenance of the child, and the punishment of the party: and the birth of the child there is no necessary part of the adjudication, if it appear in any part of the order that it was born there, so as to give the justices jurisdiction. Besides the adjudication here is thus: "We do adjudge J. F. to be the father of the said bastard child;" which word *said* refers to the former part of the order, showing it was born at H. In support of the objection it was said, it is agreed there is no positive adjudication that the child was born at H. only by inference,

If it appear in the title to an order of bastardy that the child was born in the parish, it is sufficient. See *vide Rex v. Stanley, post*, pl. 594.

(a) *Rex v. Godfrey, ante*, pl. 580.

(b) *Rex v. Bidulph, E. T. 10 Ann.*

An order on the father to pay 2*l*. 10*s*. for "the midwife and other charges," without showing the money had been expended by the parish, is good.

See ante, pl. 578. & 589.

(c) *Ante*, pl. 590.

An order of bastardy, stating, "Whereas it hath appeared to us, &c." without an express adjudication that the person charged is the putative father, is void.

(d) 1 Salk. 478.

(e) 1 Salk. 478.

which is not sufficient, as every inferior jurisdiction must expressly show the case to be within their jurisdiction. (a) The recital that complaint was made that the child was born there was held insufficient. (b) — DENNISON J. In answer to the exceptions: first, it must appear where the child was born, because the jurisdiction is given to the two justices living next to the parish church where born, &c.: but this need not be a part of the adjudication; but if it appear in any part of the order it is sufficient. — FOSTER J. The reason why it must appear where the child was born is, because to that parish only it can be chargeable. The order as to this part of it was confirmed.

592. *Rex v. Fox, T. T. 29 & 30 G. 2. Editor's MSS.* — Two justices ordered the putative father of a bastard child to pay to the churchwardens and overseers of the parish the sum of 2*l*. 10*s*. for the midwife and other charges, and for the maintenance of the child, from the birth to the day of making the order; and from the day of making this order, "We order, &c. that he pay, &c. 2*s*. a week so long as the said child shall continue chargeable," &c. It was objected, that it is not adjudged that so much as 2*l*. 10*s*. had been actually expended by the parish. But on the other side, that the justices are to relieve the parish in part or in all as they shall see fit; therefore there is no necessity to adjudge that the 2*l*. 10*s*. were actually expended; and the Court will intend that so much at least was expended in 21 weeks. — *Sid. 326., Vent. 336., Salk. 124.* These cases show that sums in gross may be ordered, and in the case in *Ventris* there was no adjudication where born; and the Court said they would intend it to be where it was adjudged to be chargeable. But in support of the objection it was said, that they order 2*l*. 10*s*. for the midwife and charges attending the delivery and before birth, when their jurisdiction by the act extends only to the maintenance of the child. — DENNISON J. The justices having power to indemnify the parish, may do it in this manner, by a sum in gross for the charges of lying-in and other incidental charges, as was held in the case of *Rex v. Moravia*. (c) — FOSTER J. The charges of the midwife, &c. fall on the parish; therefore within the jurisdiction: and the order as to this part of it was confirmed.

593. *Rex v. Pitts, E. T. 21 G. 3. Doug. 662.* — An order of bastardy was, in a great measure, in the same form with the precedent in *Burn's Justice* but with the omission of the following clause: "We therefore, upon examination of the cause and circumstances of the premises, as well upon the oath of the said A. B. as otherwise, do hereby adjudge him the said C. D. to be the reputed father of the said bastard child." — WILLES J. delivered the opinion of the Court to the following effect: The case of *Cripplegate v. Hackney* (d) seems to be more like the present than that of *Saddlecomb v. Burwash*. In that last case the report concludes by saying, "there ought to be a particular averment," &c.; and in *Cripplegate v. Hackney* the order runs very much in the same manner as here, viz. "Whereas on oath made by the said E. F. it appears that her husband was last legally settled at Hackney;" and that order was quashed, "because there was no judgment of the justices concerning the last legal settlement, but only the oath of the woman." (e) We have looked into the

proceedings in *Rex v. Grosvenor* (a), and we find, that there was an express adjudication in that case. We are, therefore, all of opinion, that this order cannot be supported.

(a) *Ante*, p. 493.

504. *Rex v. Stanley*, E. T. 22 G. 3. *Cal'd.* 172. — Two justices of the *West Riding* of the county of *York*, by an order dated the 9th May 1781, adjudged T. S. to be the reputed father of a bastard child begotten upon A. S. of A. in the said *West Riding*; "which said child is now become chargeable, &c. and is likely so to continue;" and then proceeded to order maintenance, &c. — WALLACE insisted, that there was no adjudication that the child was born in the parish charged with its maintenance, nothing more being stated than that it was chargeable to the parish, and likely so to continue: and the order was quashed.

The justices must adjudge a bastard to have been born in the parish to be charged by their order.

505. *Rex v. Hartington-Upper-Quarter*, H. T. 56 G. 3. 4 M. & S. 560. — By an order of two justices stated to be made upon the application and complaint of the overseers of the poor of the township of *Hartington*, in the parish of *Hartington*, in the county of *Derby*, reciting that it appeared upon the examination of M. L. upon oath, and by other due proof, &c. that the said M. L. was on the 7th of May delivered of a bastard child in the said township, and that the said child is likely to become chargeable to the inhabitants of the township, &c. the justices adjudged the same to be true, and that W. B. was the reputed father, and ordered as well for the relief of the inhabitants of the said township as for the maintenance of the child, that W. B. should pay to the overseers of the township 1*l.* 1*s.* for and towards the lying-in of the said M. L. and the maintenance of the said bastard child to the time of making the order, and for and towards the costs of the same, and from thenceforth weekly so long as the child should be chargeable, 4*s.* towards the maintenance of the child, &c. And because the order did not state the child was actually chargeable to the township, the justices at Sessions upon appeal quashed the order, subject to the opinion of this Court as to the validity of this objection. — PER CURIAM: Those authorities are sufficient. And as to the second objection, supposing it to be valid, it would only operate *pro tanto*. And to the last objection, they said there could be no overseers for the township, unless the township maintained its own poor; the showing that it has overseers necessarily implies that it maintains its own poor. — Order of Sessions quashed.

Order of filiation on the putative father, stating that the child is likely to become chargeable, held sufficient, without showing that it was actually chargeable. If the order directs a sum to be paid towards the lying-in and maintenance, it seems to be enough without stating that the sum was expended by the overseers. And if it be stated to be on complaint of the overseers of a township, it need not state that it is a township maintaining its own poor.

IX. Of the Appeal.

596. *Rex v. Coyston*, T. T. 15 Car. 2. 1 Sid. 149. — It was resolved, that the words "*next General Sessions*," in the 18 *Eliz.* c. 3. must be intended, that the order made by two justices must be confirmed or discharged at the next General Sessions for that part of the county where it was made, and not at the Sessions in the county; for it would be mischievous in many counties, where there are several Sessions in distinct parts of the county.

The appeal must be to the division wherein the order was made.

597. *Rex v. Brown*, T. T. 9 W. 3. 2 Salk. 480. — An order was made adjudging B. to be the father of a bastard child, May 2, 1696; and in the *Michaelmas* Sessions following the order was discharged. Now both orders being here, the latter was quashed, because it appeared thereon, that *Michaelmas* Sessions was the first Sessions after notice given to the reputed father of his being so adjudged; for though 18 *Eliz.* c. 3. appoints the appeal not to be to the first

An appeal from an order of bastardy must be to the next sessions after notice to the father. Comb. 448. S. P. *Rex v.*

Burwell, ante,
pl. 565.

Sessions after the order of the two justices, but the first Sessions after the party hath notice of the order, yet by the statute of 2 Hen. 5. c. 4. there might be a Sessions intervening, as in this case, between the order by the two justices and the order of Sessions; and it must appear on the order that this was the first Sessions after notice had of the former order: after which the first order by the two justices was quashed, because there was an adjudication therein, that the reputed father should pay a certain sum weekly till the child be of seven years of age; whereas they cannot charge the father for any certain determinate time, but as long as the child shall be chargeable to the parish.

Appeal must be
to the next
General Sessions
after notice.

598. *Rex v. Shaw*, T. T. 10 W. 3. 2 Salk. 482. — An order was made by two justices adjudging S. the reputed father of a bastard; from which he appealed to the next Quarter Sessions of the peace after notice, where the order was discharged. The order of Sessions was quashed, because by the statute 18 Eliz. the appeal must be to the next General Sessions after notice, and there might have been a General Sessions before the General Quarter Sessions, as in *London* and *Middlesex*, where there are four General Sessions in a year besides the four General Quarter Sessions.

But it shall not
be intended that
a General Ses-
sions intervened
between the no-
tice and the ap-
peal.

599. *Rex v. Guardians of the Poor of Chichester*, M. T. 30 G. 3. 3 T. R. 496. — An order was made by two justices on the 27th of March 1789, adjudging L. to be the reputed father of a bastard; against which order L. appealed to the General Quarter Sessions held on the 22d of April, where it was quashed; and no case was reserved for the opinion of this Court. But both the orders being now returned, ESKINE moved to quash the order of Sessions, because that Court had no jurisdiction to hear the appeal. The party grieved should have appealed, under the statute 18 Eliz. c. 3, to the next General (a) Sessions; and *non constat* but that a Court of General Sessions intervened between the 27th of March, when the original order was made, and the 22d of April, when the General Quarter Sessions were held. And he relied on *Rex v. Shaw*, Salk. 483. (b), where the order of Sessions was quashed for this very reason. — LORD KENYON C. J. observed, that the case cited did not appear to be one of the most authentic in Salkeld's Reports. But it is a general rule that every intendment shall be made to support an order of justices (c); and as it does not appear that the General Quarter Sessions held on the 22d of April were not the Sessions next following the 27th of March, we will not presume it for the purpose of quashing the order of Sessions. — Order of Sessions affirmed.

Upon an ap-
peal to the Ses-
sions against an
order of filia-
tion, the res-
pondents are
to begin by sup-
porting their
order, as in all
other cases.

600. *Rex v. Knill*, H. T. 50 G. 3. 12 East, 50. — The defendant appealed to the Hereford Sessions against an order of filiation of a bastard child. The Sessions confirmed the order, subject, &c. When the appeal came on to be tried, the appellant was called upon to begin, and allege and prove what he could against the order; which he refused to do; insisting that by the rules of law, the respondents were bound in the first place to begin, and sup-

(a) The 18 Eliz. c. 3. requires the appeal to be made to the next General Sessions; the 13 & 14 Car 2. c. 12. § 2. which gives an appeal against an order of removal, requires it to be made to the next Quarter Sessions.

(b) *Ante*, pl. 598. Carth. 445. S. C.
(c) Vide 2 Stra. 998, 999. Salk. 442.
& 485. *Rex v. Gregory*. Sed vide *Rex v. Hulcott*.

port the order. The respondents refused to do so; insisting that according to the practice of that Sessions, it was incumbent upon the appellant to begin, by alleging and proving a sufficient case for quashing the order. The Sessions found this to be their practice in the like cases; and therefore required the appellant to begin by showing cause against the order complained of, and proving what he could to invalidate it. And no cause being shown, nor any thing alleged or proved on either side, as to the merits, for or against the original order of filiation, the Sessions confirmed the same. — *Gaselee*, who was to have supported the order of Sessions, admitted that he could not do so; the case of *Rex v. Newbury* (a), having settled the point; and it being the general practice of Sessions throughout the kingdom, for the respondents to begin by showing their order. — And THE COURT, being of this opinion, remitted the cause to the Sessions to proceed upon and hear the appeal in the regular and general course.

(a) *Ante*, pl. 295.

601. *Rex v. Justices of Herefordshire*, H. T. 1 G. 4. 3 B. & A. 581. — One S., having had an order of filiation made on him, as the father of a bastard child, served a notice of appeal to the Quarter Sessions for the county of *Hereford*, on the morning of the 9th of October. The Sessions were holden on the 19th of the same month; and the Court refused to enter on the appeal, being of opinion that the notice was insufficient, the statute 49 G. 3. c. 68. § 5. requiring that the person aggrieved by such an order should give notice 10 clear days before the Quarter Sessions, of his intention to appeal, and the cause and matter thereof. *Taunton* obtained a rule *nisi* for a *mandamus* to the justices to receive the appeal. But the Court were of opinion, that ten clear days meant ten perfect intervening days between the act done and the first day of the Sessions, and held, therefore, that the notice was defective; and they referred to *Roberts v. Stacey*. (b) — Rule discharged.

By 49 G. 3. c. 68. § 5., ten clear days' notice of the intention to appeal is required: Held, that the ten days are to be taken exclusively, both of the day of serving the notice and the day of holding the sessions.

(b) 13 East, 21.

602. *Rex v. Justices of Salop*, T. T. 2 G. 4. 4 B. & A. 626. — P. on a former day had obtained a rule, calling upon the defendants to show cause why a writ of *mandamus* should not be directed to them, commanding them to cause continuances to be entered, and hear the appeal of one J. O. against an order of two magistrates, under the 49 G. 3. c. 68. § 5., whereby the said J. O. was adjudged to be the reputed father of a bastard child. It appeared, by the affidavits upon which the rule was obtained, that the order in question was made on the 30th January, that immediately upon the order being made, the appellant entered into the recognizance required by the statute, before the justices who made the order; and that a regular notice of appeal to the Quarter Sessions, to be holden on the 30th of April, was served on the 9th of April, upon the churchwardens and overseers of the parish on whose behalf the order was made. When the appeal was called on for trial at the Sessions, it was objected by the respondent, that no notice had been given to the justices who made the order of the intention to bring the appeal, and of the cause and matter thereof, as required by the statute; and upon the Sessions holding such notice to be necessary, the appellant offered to prove, that previous to entering into the recognizance, he gave a parol notice to the justices who made the order, of his intention to appeal against it, and of the cause and matter of such appeal; but the

Seemle, that the entering into the recognizance required by 49 G. 3. c. 68. § 5., before the justices, who make an order of bastardy, does not dispense with the necessity of giving such justices notice of appeal against the order, the statute requiring the party to give notice of bringing such appeal, "and of the cause and matter thereof." But held, that a parol notice of such appeal, and of the

cause and matter thereof, will be sufficient.

Sessions would not allow such notice to be proved, and dismissed the appeal. The rule was obtained upon two grounds; first, that the entering into the recognizance before the justices who made the order, dispensed with the necessity of giving them a notice of appeal; and, secondly, that in case a notice to the justices was necessary, the Sessions ought to have received the evidence of a parol notice, which was tendered by the appellant. — BAYLEY J. I am of opinion, that in this case the Sessions ought to have received the evidence of the parol notice of appeal which was tendered by the appellant. It may be convenient, that a notice of appeal, particularly where it is a notice of the cause and matter of the appeal, should be in writing; and in many cases the statute giving the appeal requires that there should be a written notice; but we cannot say that a notice in writing is necessary, where it is not required to be in writing by the clause in the statute, which directs a notice to be given. An appeal is usually allowed by statute on certain conditions; and when one of those conditions is, that the party appealing shall give a notice of his appeal, it would be to add a further condition, if we were to hold that such notice must be in writing. — HOLROYD J. concurred. — Rule absolute.

Notice of appeal against an order of filiation was given in the following form: "I, A. B. of, &c., intend at the next General Quarter Sessions to be holden, &c. to commence and prosecute an appeal against an order of filiation, made, &c., whereby I was adjudged to be the father of a bastard-child, born on the body of E. R., and chargeable to the parish of S." Held, that this notice was insufficient, the cause and matter of appeal not being set out as required by 49 G. 3. c. 68. § 5.

603. *Rex v. Justices of Oxfordshire*, H. T. 3 & 4 G. 4. 1 B. & C. 279. — On the 13th day of June 1822, two justices for the county of O. made an order of filiation, adjudging N. to be the father of a bastard child, chargeable to the parish of S., in the said county. On the 4th of July the following notice of appeal was duly served upon one of the justices, and a similar notice was served upon the churchwardens and overseers of the parish of S. "This is to give you notice, that I, J. N., of, &c., do intend, at the next General Quarter Sessions of the peace to be holden for the county of O., to commence and prosecute an appeal against an order of filiation made by you and the Reverend W. M., since Easter Sessions last, whereby I was adjudged to be the father of a female bastard child, born on the body of E. R., and chargeable to the parish of S., in the said county." The appeal came on to be heard at the then next General Quarter Sessions, on the 16th of July, when it was objected by the respondents, that the notice was informal, as it did not show the cause and matter of the appeal, as required by 49 G. 3. c. 68. § 5. The justices held, that the objection was fatal, and refused to hear the appeal. A rule was obtained in last term, calling upon the justices of the county of O., to show cause why a *mandamus* should not issue, commanding them to enter continuances, and hear the appeal. — ABBOTT C. J. The 49 G. 3. c. 68. § 5. requires, that notice shall be given of the intended appeal, and of the causes and matters thereof, and then proceeds to direct that the justices shall hear and determine those causes and matters. It is, therefore, requisite that they should be set out in the notice, in order to satisfy the words of the act. The object of the legislature appears to have been, that the respondents should know precisely what objections they have to meet. Now it is admitted, that under the notice given in this case, the appellant might either have contended that he was not the father of the child, or that it was not born in the parish of S., so that he could not be compelled to pay the churchwarden of that parish for its maintenance. The respondents would, therefore, be under the necessity of coming prepared to meet two objections.

when one only was relied upon by the appellant. In that view of the case, the notice would be informal, but it does not appear to me to contain any information of the cause and matter of appeal; it is merely a description of the order itself, and not of the objections which the party charged intended to make to it. The justices were, therefore, right in refusing to hear the appeal, and this rule must be discharged. — Rule discharged.

604. *Rex v. Lincolnshire, M. T. 5 G. 4. 3 B. & C. 549.* — D. F. Jones in *Trinity Term*, had obtained a rule calling upon the justices of the county of *L.*, to show cause why a *mandamus* should not issue, directing them to enter as of the last *Easter General Quarter Sessions*, the appeal of *U.* against an order of two justices, adjudging *U.* to be the reputed father of a bastard child, and to cause continuances to be entered until the next *General Quarter Sessions* and then to hear and determine the appeal. The order was made upon the 14th of *January*, and the next *General Quarter Sessions* of the peace for the county, took place on the 27th of *April*. No notice of appeal was given, nor any recognizance entered into to try the appeal at that *Sessions*, but an application was made to the justices assembled at that *Sessions* to enter the appeal then, and to adjourn it to the next *Sessions*; but the justices refused to receive the appeal for want of notice and recognizance. The affidavits in support of the rule stated it had been the practice to receive such appeals without notice, and to adjourn them to the following *Sessions*, but that was denied by the affidavits on the other side. It appeared further, that notice of appeal was given for the adjourned *Sessions* at *S.*, which were held on the 6th of *May*. — *PER CURIAM*. No alleged practice can prevail against the positive words of the act, "that no appeal shall be brought, received, or heard." The justices, therefore, had no power to enter or receive the appeal. And as to the *S. Sessions* they appear to be only *adjourned Sessions*, whereas the words of the act are, "the next *General Quarter Sessions* of the peace for the county." The notice and recognizance were clearly too late, and this rule must be discharged. — Rule discharged.

X. Of the Jurisdiction of the Sessions.

See Stat. 18 *Eliz. c. 3.* 49 *G. 3. c. 68.*

605. *Slater's case, E. T. 19 Car. 1. Cro. Car. 471.* — First, It was resolved, that before the statute 3 *Car. 1. c. 4.*, the *Sessions* had not authority to meddle in the case of bastardy till the two next justices, according to the statute 18 *Eliz. c. 3.*, had made an order therein, and that then, and not before, the justices in *Sessions* might make a new order, &c., otherwise not. Secondly, That by the 3 *Car. c. 4.* the *Sessions* have authority originally to make an order in the case of bastardy; and therefore the first order made by the *Sessions* in this case was good and legal, and the order made by the two next justices void, and could not alter or revoke the order of *Sessions*, which was first made by good authority. Thirdly, That the justices had not authority to commit the woman to prison for life for the first offence.

606. *Pridgeon's case, Bulst. 255.* — An order was made upon *P.* by two justices of peace, directing him to make a weekly allowance for maintaining a bastard child of which they adjudged him the reputed father; which order was quashed by the *Sessions*,

An appeal against an order of bastardy cannot be entered at the *Quarter Sessions*, unless there be such notice and recognizance as is required by the 49 *G. 3. c. 68.* § 7.

After the *Sessions* have made an order, two justices cannot.

Sessions have original authority.

Justices cannot commit.

No appeal lies from an order made on appeal at *Quarter Sessions* to a sub-

sequent Sessions. S. C. Cro. Car. 341. 350.

The Sessions may quash an order of bastardy made by two justices, and make an original order on another person as the reputed father, against which original order there is no appeal.

Note the difference between the 18 Eliz. c. 3. and 3 Car. 1. c. 4. See *Rex v. Price*, post, pl. 614.

The Sessions cannot fine a constable for suffering the putative father to escape.

In an original order of bastardy made at Sessions, it ought to appear that the reputed father was summoned; therefore, unless the contrary shall appear, the Court will presume that he was summoned,

and another was made there upon *J. S.*, adjudging him to be the reputed father, &c.: afterwards, at another Sessions, the last order was discharged, and by the same order of Sessions *P.* was found again to be the reputed father of the bastard child, and ordered to make an allowance for its maintenance. These orders being removed into the King's Bench, it was resolved, that the second order made upon *P.*, at the Quarter Sessions, was clearly illegal; that no appeal lay from the first order of the Sessions to the Sessions afterwards, but that the first order of Sessions was final.

607. *Wood's case*, T. T. 13 Car. 1. 2 Bulst. 355. — On complaint to the Sessions against a woman having a bastard child, the matter was by them referred according to law to the two next justices to have the examination and ordering thereof. The said two justices made an order against *J. W.* to be the reputed father, and ordered him to pay a weekly sum towards the maintenance of the said child. *W.* appealed to the Sessions; and the justices there, on a re-examination of the matter, disallowed of the order made by the two justices, and they there made a new order, by which they charged one *C.* to be the reputed father. On a reference of the matter to Sir *W. Jones*, and both the orders being read in Court, that is, the order made by the two next justices, and the subsequent order made at the Sessions, he would not enter into the re-examination of this cause, but did, *in omnibus*, affirm the last order made by the Sessions upon appeal to them from the first order; which last order made at the Sessions was final, and no appeal to be admitted against it; and this, he said, had been adjudged divers times, and mentioned particularly *P.'s* case.

608. *Rex v. Weston*, T. T. 4 Ann. 1 Salk. 122. — The Sessions, with regard to the fathers of bastards, must proceed upon the recognizance on the 18 Eliz. c. 3., but if they proceed on the 3 Car. 1. c. 4., they may commit as the two justices might have done; that is, unless the party put in security to perform the order, or to appear at the next Sessions.

609. *Rex v. Ridge*, M. T. 11 Ann. MSS. — *A.* swore that *B.* got her with child, and a warrant was granted to the defendant *R.*, then being constable, to apprehend *B.*, and he let him escape. The justices made an order upon *R.* to pay 3*l.* towards the expences the parish had been at, and 1*s.* a week towards the maintenance of the child, and the mother to pay 6*d.* a week. — Quashed as to the constable, the justices not having such authority; but confirmed as to the mother.

610. *Rex v. Clegg*, M. T. 8 G. 1. Stra. 475. — An order of bastardy was made at Sessions (which was admitted to have original jurisdiction). — DENTON objected, that it was not said the defendant was ever summoned or appeared, and natural justice required that he should at least have an opportunity to defend himself. — PRATT C. J. I believe these orders made originally at Sessions are very rare, the usual way being to bring the matter before the Sessions by way of appeal from the order of two justices. Now if it should be taken, that the order of two justices will be well enough, without their showing a summons or appearance; yet I think this case will fall under a very different consideration. For in the other case the party has an oppor-

tunity to relieve himself by appeal, whereas upon an original order at Sessions he can have no opportunity to bring the matter to a farther examination; so that it is but a lewd woman's going behind his back and swearing a bastard upon him, by which means the most innocent man in the world may be condemned. In the case of the *Queen v. Simpson (a)*, it was long debated, whether there ought not to have been a personal appearance of the deer-stealer; at last indeed it was determined, that a summons was sufficient, but it was never offered to be supported upon the foot of not showing a summons. So far from it, that exceptions were taken to the manner of the summons, and the Court delivered a special opinion as to them. — EYRE J. It not appearing that this order was made in the absence of the party, I think we must take it to be a regular proceeding. And so it was held in the case of *Rex v. Peckham, Carth. 406. (b)* The Court said, where summons was necessary, they would presume there was one, unless the contrary appeared; for all jurisdictions are presumed *prima facie* to act according to law. — FORTESCUE J. It is certain, that natural justice requires, that no man should be condemned without notice; for which reason, I think the order will be good, because it does not appear to us, that he had no notice: are we to suppose the Sessions have proceeded contrary to right and justice, and that too in a case where they have undoubted jurisdiction? In the case of servants' wages the jurisdiction is given only in husbandry, and yet orders have been held good, where it did not appear the service was in husbandry; for the Court said, they would intend it so, unless the contrary appeared. — PRATT C. J. I do not see to what purpose we exercise a superintendency over all inferior jurisdictions, unless it be to inspect their proceedings, and see whether they are regular or not. I have often heard it said, that nothing shall be presumed one way or the other in an inferior jurisdiction. And as to the case of wages, it was always wondered at, and in my Lord Parker's time it was actually contradicted in the case of *Rex v. Helling. (c)* — *Adjournatur. T. 12 G.* it was moved and confirmed without opposition.

611. *Rex v. Teriam, M. T. 13 G. 1. MSS.* — LEE moved to quash an order of bastardy by two justices to charge the defendant with keeping a bastard begotten on a *feme covert* in the husband's absence, on the evidence of a certificate from a captain in the army that the husband was at that time in *Ireland*, and the concurring evidence of the woman's confession that the defendant was the father. The case was thus: The defendant appealed from the order of two justices to the Sessions, who quashed the first order. The same two justices made a second order on the grounds of the first, and it was insisted the order was void; for according to the case in 1 *Vent. 89.* if an order of two justices be revoked by appeal at Sessions, the person is absolutely discharged, and the justices have no power to make a new order. It was answered, that if the Sessions discharge the order for form, a new order might be made. — *SED PER CURIAM*: Nothing of that kind shall be intended. The order of Sessions recites that this order was made on full hearing, and therefore the merits must have come before them, and the discharge by the Sessions on the appeal is conclusive: and the defendant being in Court was discharged.

although not so stated in the order.

S. C. 8 Mod. 3.

(a) 10 Mod. 248. 341. 378. 1 Sess. Cas. 346. Gilb. 282.

Stra. 44. Ld. Ray. 1406.

(b) S. C. 5 Mod. 321. Comb. 439.

Salk. 442.

(c) *Ante*, pl. 36.

Order of Sessions recites that it was made on full hearing, the merits therefore must have come before them, and their discharge is conclusive.

S. C. Str. 716. Ld. Ray. 1423. 1 Sess. Cas. 272.

A second Sessions cannot vacate an order made by two justices and confirmed by a former Sessions.

See *Rex v. Tenant*, *post*, pl. 616.

An original order of bastardy may be made at the Quarter Sessions.

(a) *Ante*, pl. 606, 607.

(b) *Ante*, pl. 605.

But the Sessions cannot order the reputed father to give security for the performance of the order made by one justice.

612. *Rex v. Arundel*, T. T. 1 G. 2. 1 Sess. Cas. 234. — Two justices made an order, that the defendant should pay a sum in gross, and also 2s. a week so long as the child should be chargeable. The party appealed to the Sessions, who confirmed the order. At a subsequent sessions, the father of the bastard desired to have the keeping of it, and that the payment of the 2s. a week should cease: which the second Sessions ordered. A motion was made to quash this last order of Sessions, because in this case they had no jurisdiction. And THE COURT held, that the second Sessions had no authority to order the subtraction of the 2s. a week; and the order was quashed, because it was made out of time (being three years after the appeal), and therefore the justices had no jurisdiction.

613. *Rex v. Greaves*, E. T. 21 G. 3. Douglas, 632. — An original order of bastardy was made at the Nottinghamshire sessions (Easter 1780), which having been removed into this Court, and a rule granted to show cause why it should not be quashed, the Court desired the counsel against the order to begin. — BALDWIN stated the principal objection to be, that the Sessions have no original jurisdiction in making orders of bastardy, and mentioned Dr. Burn's opinion and reasoning on that point, and Wood's and Pridgeon's case in *Bulstrode*. (a) — HOWARTH, in support of the order, said, there were four or five cases which had decided that the statute of 3 Car. 1. c. 4., gives the Sessions an original jurisdiction. — BULLER J. read from *Bott*, *Slater's case* (b); and the Court were clearly of opinion, that the Sessions have an original jurisdiction. — The order confirmed.

614. *Rex v. Price*, H. T. 35 G. 3. 6 T. R. 147. — The Court of Quarter Sessions made an order on the defendant, in substance as follows: It recited that M. G. had been lately delivered of a female bastard child, and that she charged the defendant with being the father; that the defendant was then present in court, in pursuance of a certain recognizance taken before B. J., one of the justices, &c. (on a prior day) and entered into by the defendant and one J. P. as surety for the defendant, with a condition thereunder written, that if the defendant should appear at the then next General Quarter Sessions, &c. and should perform such order as should be made in pursuance of the statute 18 Eliz. c. 3., then the recognizance was to be void; and that the Court of Quarter Sessions had heard the complaint, &c. on oath. The order then stated that that Court adjudged the defendant to be the father of the said child, and ordered him to pay 20s. for the expences of the lying-in and for the maintenance of the child till that time, and the further sum of 1s. 6d. weekly from that time so long as the child should continue chargeable. The order further stated that the Court of Quarter Sessions also ordered the defendant to find sufficient sureties for the performance of that order, and that, on the defendant's alleging that he was not compellable to find such sureties, they committed him to the house of correction until he should find sufficient sureties; and that the Court also directed that the recognizance of the defendant and J. P. for the defend-

(c) Vide *Rex v. Clegg*, *ante*, pl. 610. where an original order made at Sessions was confirmed. It was not objected to

on that ground, but, on the contrary, the authority to make such an order was admitted.

ant's appearance and conformity at those Sessions should be discharged. The above order having been removed, a rule was obtained calling on the prosecutors to show cause why that part of it, by which the defendant was committed for want of sureties, should not be quashed. — LORD KENYON C. J. said, that as there was no doubt in this case respecting the illegality of the order, this point having been expressly decided in *Rex v. Fox*, and as it could not be productive of any good consequence to order the case to be argued on a future day when the defendant could be present, it would be better to dispense with his attendance on this occasion, and dispose of the case at once. His Lordship then read the case from a manuscript note, and added, as that case, which was determined on great consideration and by such able judges, is directly in point, it ought to govern the present case. Therefore, so much of this order of Sessions as respects the giving of security for the performance of the order, and the discharging of the defendant's recognizance, must be quashed, and the rest of the order confirmed; which was ordered accordingly.

See *Rex v. Fox*,
ante, pl. 530.

XI. Of the Certiorari; and quashing Orders of Bastardy.

615. *Rex v. Matthews*, H. T. 8 W. 3. 2 Salk. 475. — Exception was taken to an order of bastardy: — SHOWER answered, that no order relating to a bastard child can be quashed, unless the reputed father is present in Court; which was allowed.

Order of bastardy not to be quashed, unless the father is present.

616. *Rex v. Tenant*, M. T. 13 G. 1. Str. 716. — Upon an order of bastardy the defendant appealed to the Sessions, where upon a full hearing he was discharged; afterwards the same justices made a new order upon him. — And LEE moved to quash it, the defendant being by the former order of Sessions absolutely discharged. (a) — And of that opinion was THE COURT, and quashed the last order.

After defendant is discharged at Sessions a new order of bastardy cannot be made.
L. Raym. 1423.
Cro. Car. 350.

617. *Rex v. Gibson*, H. T. 33 G. 2. 1 Blac. Rep. 198. — Norton moved to quash an order of bastardy, which being indefensible was accordingly done, the defendant entering into a recognizance to abide the order of Sessions below; which was the reason, the Court said, why the *personal appearance* of the defendant in these cases always required.

On quashing an order of bastardy, the father shall enter into a recognizance.

618. *Rex v. Stanley*, E. T. 22 G. 3. Cald. 172. — Two justices, by an order dated the 29th May 1781, adjudged T. S. to be the reputed father of a bastard child, begotten upon A. S.; "which said child is now become chargeable, &c., and is likely so to continue;" and then proceeded to order maintenance, &c. This order was served upon the defendant on the 31st of June. The next Sessions were at Midsummer on the 18th July. Upon an appeal to this order at the next Michaelmas Sessions holden by adjournment on the 10th of October, that court dismissed the appeal, upon the ground of its not having been made at the sessions next after the service of the order. In the ensuing term a certiorari issued, to remove all orders upon this subject made by the said justices. Upon the return of these orders, a rule was obtained to show cause why the order of Sessions made on the 10th of October 1781, should not be quashed. — Chambre objected, that the defendant could not under this rule go into the original order, the order of Sessions, which alone was moved to be

Order of bastardy removed by certiorari in due time, may be quashed for objections on the face of it, without a previous appeal to the Sessions.

(a) *Vide ante.*(b) *E. 1 Ann.*(c) *Vide ante,*
pl. 69.

A *certiorari* does not lie to remove an order of Sessions by which a soldier is continued in custody on a charge of bastardy: he should be removed by *habeas corpus*.

quashed, having only dismissed the appeal and *not confirmed the original order*. — BULLER J. Though there may be a slight impropriety in the form, if in effect the order of Sessions confirms the original order, the motion to quash the order of Sessions is well enough. — THE COURT seemed to think, that if the defendant had meant to take exceptions to the original order, he should have done it by appeal in due time to the Sessions; as they could give relief as well upon the form (a) as upon the merits; and that having declined the bringing of his case before the proper jurisdiction in the first instance, he ought not now to be assisted by the COURT *per saltum*: but they gave time to look for authorities to justify such an interference. A few days afterwards CHAMBER admitted, that the order might be brought up by *certiorari*, without any appeal having been previously lodged at the Sessions within time; and he stated the general rule as laid down in 1 *Salk.* 147. (b), that no *certiorari* shall be granted to remove orders of justices *before* the determination on appeal to the Sessions, unless the time of appeal be expired; because it otherwise hinders the privilege of appealing: consequently, that the Court had a general authority to interfere; and that the present case, in which the defendant had declined an appeal within the period prescribed by law, was not within the exception. He also said, that this rule was farther explained in the case of the *Borough of Warwick* (c); which adjudged, that it was only in cases wherein the time of appeal was limited, and not where it was left open at any time, that this general authority of the Court was abridged. He added, that as the *certiorari* appeared to have been moved in time, he should not press the Court upon the form of the present rule, and without a reasonable prospect of success put the party to the expence of another. — PER CURIAM: The original order of adjudication of two justices must be quashed, and the order of Sessions, dismissing the order of adjudication, affirmed.

619. *Rex v. Bowen*, H. T. 33 G. 3. 5 T. R. 156. — The defendant having been committed to the house of correction at A. on the 9th of October, (on a charge made by A. Ives of Eton parish for begetting her with child, which child was likely to become a bastard,) for refusing to give security to indemnify the parish of Eton, and for refusing to enter into a recognizance, with sufficient surety, to appear at the then next General Quarter Sessions for B., and to abide by and perform such order as should be made in pursuance of the statute 18 *Eliz. c. 3.* was ordered by the last Court of Quarter Sessions to be continued in custody till, &c.; and the following case was stated for the opinion of this Court. W. B. was on the 9th of October last committed to the house of correction at A., upon the charge above mentioned, by warrant of Sir C. P. The said W. B. was at the time of his being apprehended on the charge specified in the said commitment, and still is, a private soldier enlisted, and actually serving in His Majesty's 29th regiment of foot, and has no property, except his pay and subsistence as such soldier; and the said A. I. is not yet brought to-bed. — LORD KENYON C. J. Before I give any opinion upon this subject, I desire it may be understood that it is done under a protest that no *certiorari* ought to have been granted to remove the order of Sessions hither, because I think that the proper mode of obtaining relief in this case, if the defendant were entitled to it, is

by *habeas corpus*, on a return to which the causes of commitment would be specified, and upon those the Court would be enabled to form an opinion whether or not those causes were sufficient to justify his detention.—GROSE J. When the case of *Rex v. Arche*: (a) was before the Court, no objection to the *certiorari* was taken: now it has been mentioned, I am inclined to think that the writ ought not to have issued.—The order of Sessions was confirmed: but LORD KENYON C. J. desired that this might not, in future, be considered as a case in which the Court had, on consideration, granted a *certiorari* to remove such an order. (a) *Ante*, pl. 533.

XII. *The Punishment of the Mother and reputed Father.*

See Stats. 18 Eliz. c. 3. 7 Jac. 1. c. 4. 49 G. 3. c. 68. 50 G. 3. c. 51.

620. *Bulstrode*, 348.—The mother of a bastard child shall not be punished upon the statute of the 7 Jac. 1. c. 4. as for her second offence, unless she had been before questioned, and punished for her first offence. But she might have been punished for her first offence either by the statute 18 Eliz. c. 3. or 7 Jac. 1. c. 4.; but is not to be punished by the 7 Jac. 1. c. 4. § 7. as for her second offence, unless she had been before punished for her first offence: but this second offence shall be now taken and deemed as her first offence; and so is to be punished for the same according to law.

The mother of a bastard child cannot be punished for a second offence under 7 Jac. 1. c. 4. unless she has been before punished under 18 Eliz. c. 3. See Slater's

case, *ante*, pl. 605. *Rex v. Ellen Taylor*, *ante*, pl. 532.

621. *Ex parte Addis*, M. T. 3 G. 4. 1 B. & C. 87.—*Phillips* had obtained a rule to show cause why a writ of *habeas corpus* should not issue, directed to the keeper of the gaol of the county of *Leicester*, to bring up the body of *J. A.*, for the purpose of discharging him out of custody, on the ground that the warrant of commitment was defective. It appeared that on the 4th of April 1822, two justices made an order of filiation, which recited that complaint had been made to them by the overseers of *S.*, as well on their oath as on that of *A. S.*, late *A. G.*, single woman; that the said *A. G.* was delivered of a bastard child on the 29th November 1808, at the said parish, and that the said child was chargeable to the said parish from that time till 16th April 1812; and that *J. A.* did beget the said child, and that the child soon after the 29th November 1808, was filiated by the said *A. G.*, and that the said *J. A.* did then abscond. It then recited that the defendant was present on the 4th April 1822, before the justices in pursuance of their warrant, who adjudged him to be the reputed father, and thereupon ordered him to pay 8*l.* (being the expences incident to the birth and the lying-in of the said *A. G.*, and the costs of apprehending and securing him the said *J. A.*, and of the order of filiation;) and the further sum of 17*l.* 10*s.*, being after the rate of 2*s.* per week for three years and 19 weeks, viz. up to the 6th of April 1812, on which day the bastard child died, which sum had been expended in the maintenance of the said bastard child. The justices on the same day, in consequence of the defendant having refused to pay, or to find surety for the payment of the sums mentioned in the order, committed him until those sums should be duly paid, or until he should be otherwise delivered by due course of law. At the Sessions held April 15th 1822, no appeal was entered against the order, but the Sessions thought the commitment illegal on the face of it, and discharged the defendant. On the 8th

Where an order of bastardy has been made, and the time for appeal past, it cannot be enforced under 18 Eliz. c. 3., but the magistrate must proceed under 49 G. 3. c. 68. § 3. by commitment for three months.

September 1892, the defendant was again brought before the magistrates who had made the order, and they then committed him again to prison. The warrant of commitment recited the order of filiation; and that the defendant had not paid, or caused to be paid, the said sums of 8*l.* and 17*l.* 10*s.*, and did still refuse so to do. And thereupon, they adjudged him to be guilty of the offence aforesaid against the provisions of the 18 *Eliz. c. 3.*, and therefore, under the directions of the aforesaid statute, committed him to ward in the common gaol, there to remain without bail or mainprize, except he should put in sufficient surety to perform the said order, or else personally to appear at the next General Quarter Sessions of the peace to be holden for the county of *L.*; and also to abide such order as the justices of the peace there assembled, or the more part of them, then and there should take in that behalf, &c. In moving for the rule *nisi*, two points were made. First, that the order of filiation recited in the warrant was bad, being for by-gone maintenance. Secondly, that the magistrates had no power to commit under the 18 *Eliz. c. 3.*, but were bound to commit for three months under 49 *G. 3. c. 68. § 3.* On showing cause the first objection was given up, the cases *Rex v. Smith* (a), *Rex v. Odam* (b), *Rex v. Moravia* (c), *Rex v. Fox* (d), *Rex v. Hill* (e), and *Rex v. Hartington* (g), being cited as authorities to show that an order for by-gone maintenance is good.—*PER CURIAM*: If the original order of filiation dated 4th *April* be valid, it is clear that the party could only get rid of it by an appeal, which he has not made. If so, then it is clear, that all the subsequent proceedings, in order to enforce the payment of the maintenance due by that order, must fall under the 49 *G. 3. c. 68. § 3.* If the original order be on the face of it invalid, then, whether appealed against or not, it cannot now be enforced. In either event, the present commitment is bad. It has been contended, however, that it is good, as far as relates to the sum of 8*l.* But if a man be committed for the non-payment of two sums, one of which is not due, the warrant of commitment is bad for the whole. The rule must, therefore, be made absolute.—Rule absolute.

- (a) *Ante*, pl. 577.
 (b) *Ante*, pl. 578.
 (c) *Ante*, pl. 590.
 (d) *Ante*, pl. 590.
 (e) 1 *Sid.* 326.
 (g) 4 *M. & S.* 559.

XIII. Of Bastards born in Lying-in Hospitals.

See Stats. 13 *G. 3. c. 82.* 20 *G. 3. c. 36.*

A room in a parish work-house, licensed pursuant to 13 *G. 3. c. 82.* and appropriated to the reception of, and used for the purposes of, delivery of pregnant women resident within the parish, whether settled there or elsewhere, and the expenses of which room was

622. *Rex v. Manchester, E. T. 2 G. 4. 4 B. & A. 514.*—Two justices, by their order, removed, *M.*, the wife of *J. C.*, and her two children, *E.* aged eight years, and *J.* aged six weeks, from the township of *M.* to the parish of *H. A. Canterbury*. The Sessions, upon appeal, confirmed the order as to *M. C.* and *E.* her daughter, and quashed it as far as it respected *J.* the son; subject, as to the settlement of the said *J.*, to the opinion of the Court of King's Bench, on the following case:—In the *M.* work-house, there is a room, for which a licence has been obtained, as for a hospital, or place for the reception of lying-in women. This room has been duly licensed, pursuant to the provisions of the statute 13 *G. 3. c. 82.*, provided that, under the circumstances, it is such a place as can be duly licensed within the meaning of that act. The room is appropriated, by the officers of the town of *M.*, to the reception of women resident within the township, but settled elsewhere, and pregnant with children

likely to be born bastards, and also to the reception of pregnant women chargeable to the township, and settled in *M.*; and in some few instances, pregnant women have been received from other districts, upon a compensation paid to the overseers of *M.* by the overseers of the place in which such pregnant women were resident, in respect of the accommodation afforded. Women in the situation above described, having settlements elsewhere than in *M.*, if too far advanced in pregnancy to be safely removed to their settlements, are placed by the town officer in this room, for the purpose of being delivered. The expences incurred in respect of the room are defrayed, in common with the general expences of the workhouse, out of the parish rates. *M. C.* being settled in the parish of *St. A.'s*, in *C.*, but resident within the township of *M.*, and pregnant with a child likely to be born a bastard, was placed, by the officers of the town of *M.*, in the above-mentioned room in the workhouse, and was there delivered of the pauper *J.*, who was born a bastard. The questions for the opinion of the Court were, Whether the above-mentioned room is a hospital, or place within the meaning of the act referred to? and, Whether, by force of that act, the settlement of *J. C.* is in the parish of *St. A.'s*, or whether it is in the township of *M.*? — ABBOTT C. J. It seems to me, that in this case we cannot consider this as a hospital or place within the act. By the 10th section, the person having the management of it is directed, before the admission of any pregnant woman into such hospital, to take her before a justice, to be examined whether she be married or single; and other duties are cast upon them for that purpose. By the 4th section, an inscription is to be placed over the door or public entrance of every such hospital, stating, that it is licensed for the public reception of pregnant women; and the places spoken of in the 3d section are those used for the public reception of pregnant women, and supported by voluntary contribution. In the present case, it is only a room set apart for this purpose in the workhouse, the expences of which are defrayed out of the poor's rate. I think, therefore, that this cannot be said to be used for the public reception of pregnant women, nor supported by charitable contribution. The township, therefore, is not protected by the 5th section; and the Sessions have come to a right conclusion. — Order of Sessions confirmed.

defrayed, in common with the general expences of the workhouse, out of the parish rates, is not a hospital or place within the 13 G. 3. c. 82. § 3.

CHAPTER IX.

APPRENTICES.

- I. *Who shall take Apprentices.*
- II. *Who are compellable to serve.*
- III. *Of the Indenture.*
- IV. *Of the Stamp Duty.*
- V. *Of the Apprentice Fee.*
- VI. *Jurisdiction of the Justices and the Sessions.*
- VII. *Of assigning Apprentices; and the Death of the Parties.*
- VIII. *Of Parish Apprentices.*
- IX. *Of Apprentices to the Sea Service.*
- X. *Of Apprentices bound by Public Charities.*
- XI. *Of Apprentices to Chimney Sweepers.*
- XII. *Of Apprentices in Cotton and Woollen Mills.*

I. *Who shall take Apprentices.*

See stats. 5 *Eliz.* c. 4. § 25, 26, 28, 29, 33, 46. 54 G. 3. c. 96.

II. *Who are compellable to serve.*

See stat. 5 *Eliz.* c. 4. § 35, 36.

III. *Of the Indentures.*

See stat. 5 *Eliz.* c. 4. § 25, 41, 42, 43. 54 G. 3. c. 96.

An apprentice must be retained by DEED.

Dalt. c. 58.
3 Bac. Ab. 546.
Ld. Ray. 1117.

An infant apprentice cannot be sued on the covenants of his indentures; but the master may chastise him for misbehaviour, or proceed under 5 *Eliz.* c. 4.

623. *BACON's Abr.* 546 — The retaining a menial servant, and taking an apprentice, differ greatly as to the manner: for as to the first, it may be by parole, contract, or agreement only; and therefore such a one may be by parole or without writing; but an apprentice must be by deed, and cannot be discharged without deed, and must be retained by the name of an apprentice, otherwise he is no apprentice though he be bound.

624. *Gilbert v. Fletcher, T. T. 5 Car. 1. Cro. Car. 179.* — Covenant against an apprentice for departing from his service without licence, within the time of his apprenticeship. The defendant pleaded, that at the time of making the indenture, he was within age; and thereupon it was demurred. And it was argued at the bar, that this indenture should bind the infant, because it was for his advantage to be bound apprentice, to be instructed in a trade: he is also compellable by the statute of 5 *Eliz.* to be bound out an apprentice. But ALL THE COURT resolved, that although an infant may voluntarily bind himself apprentice, and if he continue apprentice for seven years, he may have the benefit to use his trade: yet neither at the common law, nor by any words of the statute of 5 *Eliz.* a covenant or obligation of an infant for his apprenticeship shall bind him. But if he misbehave

himself, the master may correct him in his service, or complain to a justice of peace, to have him punished, according to the statute; but no remedy lieth against an infant, upon such covenant. And, therefore, it was adjudged for the defendant.

625. The case of *Chesterfield*, T. T. 9 W. 3. 2 Salk. 479. — J. was a servant to Sir P., in W.; afterwards he left his service, and was put out by his master Sir P. to a barber in C., who was to teach him to shave and make perriwigs, for which he was to have 5*l.* from Sir P.; J. continued a year in his employment, according to the covenants between Sir P. and the barber, to which J. was no party. — THE COURT adjudged that this did not make a settlement at C., because it was no service; and that J. was thereby no more than a boarder there for his education, which is no service to make a settlement.

A covenant between the master and a third person is not a binding so as to constitute an apprenticeship.

626. *Barber v. Dennis*, M. T. 2 Ann. 6 Mod. 69. — On an action of covenant against an apprentice for leaving his service, Holt C. J. held, that if a master license an apprentice to leave him, he cannot afterwards recal that licence.

An agreement to cancel indentures cannot be revoked.

S. C. Salk. 68.

627. *Rez v. Thursley*, T. T. 3 Ann. 6 Mod. 190. — The son was bound an apprentice to his father, who gave up the indenture to the son, and bound him out to service for a year in another parish, where he served, but did not cancel the indenture. The son becoming poor, the justices held him settled in the parish where the father lived, because the indenture being still in force, his apprenticeship continued. And though it was agreed, that an accord with satisfaction would be a good discharge of this covenant: and though it was urged that here was that which in its nature amounts to a satisfaction to the father, for now he is discharged of the obligation of providing for his son as an apprentice; yet THE COURT held that, the indenture not being cancelled, the obligation of apprentice continued; and that if the father should get the indenture into his hands again uncanceled, and sue the son thereupon, the aforesaid agreement would not be a good plea for the son. — POWELL J. remembered the case in the year-book of Hen. 7. where one was bound by bond, and the obligee delivered it to the obligor, who omitting to cancel it, the obligee into whose possession it afterwards came put it in suit; and all this was pleaded specially and adjudged no plea.

An indenture of apprenticeship, though it be given up, yet, if it remain uncanceled, continues in force until the term expires. Shaw, pl. 222.

628. *Smith v. Birch*, M. T. 1 G. 2. 1 Sess. Cas. 222. — An action was brought against the defendant for enticing away and detaining the plaintiff's apprentice, who had agreed by writing to serve the plaintiff for seven years. Upon evidence it appeared, that the style of the writing begun, "This indenture, &c. &c." but, in fact, the parchment was not indented, but was a deed poll. It was contended, that the young man was not an apprentice, because he was not bound by indenture; for an infant can be bound in no other way than as the statute 5 Eliz. c. 4. directs, and that is, "by indenture." This defect cannot now be made good, for the deed cannot now be indented, for that would be a forgery, and by making it so, it might be an estoppel: therefore, unless the plaintiff can show the young man to be of full age at the time of signing such deed, he cannot be accounted his apprentice, neither can the plaintiff prove him to be his servant by this

The binding of an apprentice under 5 Eliz. c. 4. cannot be by DEED POLL, but must be by INDENTURE, as the statute directs.

Cro. Elis. 472. Cro. Jac. 49. Salk. 68.

IN INDENTURES of apprenticeship, in which the apprentice binds himself to perform a specific act, yet, if the father or other person covenant with the apprentice for the true performance of the articles, &c. the obligation shall be taken distributively, and a joint action of covenant will lie, although the breach be assigned as a covenant in the singular number.

The failure of the master does not cancel the indentures.

Although the 5 Eliz. c. 4. makes all apprenticeships in corporate towns for less than seven years void, yet indentures for a less time are voidable only as between the parties.

S. C. Stra. 1066.

(a) Hob. 166.

(b) *Ante*, pl. 626.

(c) *Post*, pl. 643.

deed; for he has declared for an *apprentice*, and must prove him so to be. — The plaintiff was nonsuited.

629. *Whitley v. Loftus*, M. T. 10 G. 1. 8 Mod. 190. — IN COVENANT on an indenture, in which the father of the apprentice and the apprentice of the one part, and the master of the other part, mutually covenanted and agreed, &c. The action was brought jointly against the father and son, on the breach of a covenant by the son faithfully to account at his master's request for all such of his master's goods as should come to his hands. After verdict for the plaintiff it was moved in arrest of judgment, that as this was a joint action, and the breach was assigned against the son only, the plaintiff could not maintain his judgment. — THE COURT was of opinion, that the very end of binding the father was to answer the wrong which might be done by the son to his master, therefore he, the father, must be obliged for his son's true performance of the articles. It is true, that, at the end of the articles, the covenant is in the singular number, and it must be so where the son is bound to perform the thing for which the covenant is made: this clause is usually inserted that the covenants may be taken distributively, viz. that each of the covenantors should perform his part; and this makes the covenant of the son bind the father who covenanted for him as well as for himself. — So the plaintiff had judgment.

630. *Rex v. Buckingham*, E. T. 10 G. 1. 2 Ld. Raym. 1352. — A. was bound apprentice to J. C., of B., and served him six months under the indentures. His master afterwards failed in business, and A., with his master's consent, hired himself to J. G., in the parish of S. He served G. in S. two years, and afterwards C. delivered up to A. his indentures. — THE COURT held that the indentures were not cancelled by the failure of C.

631. *Rex v. St. Nicholas, Ipswich*, M. T. 10 G. 2. Burr. S. C. 91. — The question was, Whether a person bound an apprentice in a corporate town or city for a less time than seven years gains a settlement there by such binding and service under it? — LORD HARDWICKE. This case depends upon the 26th and 41st sections of 5 Eliz. c. 4., by the first of which apprentices may be retained in corporate towns for seven years at the least; and by the latter section all indentures, &c. of apprenticeship, otherwise than by this statute ordained and limited, are declared to be void in law to all intents and purposes. I am of opinion that the latter clause does not make such indenture void, but only voidable by the parties themselves, and by them only. There are many cases, where, according to the strict words of the statute, a thing is made void, yet has been held not to be absolutely void, but only voidable; as in *Whinchcomb v. Winchester* (a), and *Barber v. Dennis*. (b) The principal objection to this binding is founded on the determination of *Cuerden v. Leyland* (c), where the indenture was holden to be absolutely void for want of being stamped. But the statute 8 Ann. c. 9. not only declares that all such unstamped indentures "shall be void," but further adds, "and not available in any court or place, or to any purpose whatsoever;" and there is a subsequent clause, that no such indenture shall be admitted as evidence in any suit to be brought by any of the parties thereto, unless such party in whose behalf it is produced shall make oath, that the whole was really given with the apprentice was truly inserted. And yet the

order of Sessions in that case was grounded upon the indenture which was not stamped, nor was the duty paid. The statute 5 *Eliz. c. 4.* rather respects the particular advantage of corporations than that of the public in general, and therefore it would be inconvenient to make too rigid a construction of it: which was likewise the opinion of the other judges.

692. *Rex v. Stratton, E. T. 21 G. 2. Burr. S. C. 272.* — *S. P.*, at the age of 14 years, was by his mother (being then a widow) placed as an apprentice with his brother-in-law *J. P.*, by trade a cordwainer, in the parish of *S.*, for six years, to learn the said trade: but at the time of placing him as aforesaid, no indenture of apprenticeship was executed. The mother agreed to pay to his master 4*l.* in hand, and 4*l.* at the end of three years, and his master was to find him in meat, drink, washing, and lodging, during the said six years, and his mother was to find him in clothes during the said term; all which was performed accordingly: and the said *S. P.* believed, that in or about the last year of the said term one part of an indenture was prepared, in order to bind him an apprentice to the said *J. P.*, pursuant to the said contract or agreement. But he did not remember that he executed the said part, or that it was executed by his mother, and the said *J. P.*, or either of them, nor what was become of the said one part. It was moved, that all this doth not amount to such a *binding* as will gain a settlement, there being no *indenture* duly executed. — THE COURT seemed to think this exception too strong to be answered; and made a rule to show cause; which rule was afterwards made absolute without defence.

An agreement to execute indentures of apprenticeship, although the service is performed, and the writings were prepared, is not a sufficient *binding* under 5 *Eliz. c. 4.*

693. *Rex v. St. Mary Kalendar, T. T. 21 & 22 G. 2. Burr. S. C. 274.* — *J. M.* the pauper was bound apprentice for seven years to *J. G.* of *St. M.*'s parish, and served there accordingly for five years, and then left his master. The indentures were afterwards *exchanged* between the master and apprentice's father by consent of the apprentice. About one year afterwards, the father of *J. M.* contracted with *W. S.* of *T.* for binding *J. M.* apprentice to him for four years, and in consequence of that agreement *J. M.* went to *W. S.* on trial, and lived with him a year and three quarters in *T.* But no indentures were executed, nor other agreement made. — LEE C. J. There can be no ground to consider this as a settlement at *T.*, but upon the supposition that the first indentures subsisted, and that the service at *T.* was under them. But the *exchange* of the indentures certainly, in law or equity, which are the same in this case, amounted to a *cancelling* of them, and a determination of the apprenticeship under them.

Exchanging the indentures is equivalent to *cancelling* them.

694. *Rex v. Mawnam, H. T. 22 G. 2. Burr. S. C. 290.* — *J. M.* was put out as an apprentice on a parole binding, no indentures or agreement for indentures, having been drawn. — *Henley* contended that the statute 3 & 4 *W. & M. c. 11. § 8.* expressly requires that the binding shall be by indenture. — *Ford*, of counsel on the other side, owned it could not be supported.

A parole binding is not sufficient. *Burr. S. C. 540. 656.*

695. *Rex v. Whitchurch Canoncorum, T. T. 5 G. 3. MSS.* — *J. G.*, when he was of the age of 22 years, agreed with *W. B.*, a stone-mason, to bind himself apprentice to the said *B.* for the term of six years; that *B.* should, during the term of his apprenticeship, provide for him meat, drink, washing, lodging, and clothing; that *G.* should live with and work for him, as his apprentice, in his said

No agreement whatever will constitute an apprenticeship, unless there are indentures executed.

5 Mod. 328.

trade, during that term; and that indentures should be executed between them accordingly: but no such indentures were ever executed. G. immediately after the agreement was made went to live with B., and worked for him as an apprentice, in his trade, for five years and upwards, in the parish of W., and was also sometimes employed by B. in husbandry-business; of which he complained, as being contrary to the agreement, by which he was to work for B. in the trade of a stone-mason. The pauper, before the expiration of the last year of the term, married, and left his master, with his master's consent. There never was any other contract or agreement between them. No wages were ever paid by B. to G.; but a little pocket-money was sometimes given to him by B. They always considered themselves as master and apprentice: but *as no indenture was ever executed* between them, they thought that they were at liberty to part when they pleased. And when G. complained to B. "that he ought not to be employed except in his business of a stone-mason," B. told him, "*that he might go away if he pleased.*"—THE COURT. The objects of taking an apprentice and having a servant are distinct, and cannot be converted one into another. The case of *Rex v. St. Mary Kalendar* (a) is in point. G. cannot be considered an apprentice because there is no indenture.

(a) *Ante*, pl. 638.

An apprentice discharged of one indenture may be again bound apprentice by another.

636. *Rex v. Weddington*, T. T. 14 G. 3. 2 Burr. S. C. 766.—T. L., the pauper, being then of the age of eight years and a half, bound himself apprentice by indenture, with his father's consent, who was a party to the indenture, to W. M., for seven years; and served him under the indenture one year and a half, and then the indenture was *destroyed by consent* of the master, the father, and the APPRENTICE. The pauper, within half a year afterwards, bound himself apprentice by indenture, with his father's consent, to T. M., for seven years; and served the said T. M. in the parish of B., under the said lastmentioned indenture, *four years*; and then this indenture was *destroyed by consent* of the said T. M. the master, the father, and the APPRENTICE. The pauper, after this, bound himself apprentice, by indenture to one S., for two years, and *duly served* the said S., under the said lastmentioned indenture, the whole of the said *two years*.—LORD MANSFIELD: The single question is, Whether the indenture of apprenticeship with T. M. was void, or not? there having been a former indenture, but such former indenture having been cancelled, by agreement between the master, the father, and the apprentice. The case of *Rex v. Austrey* (b), though very correctly, I believe, reported, might probably mislead the justices, by their not attending to the circumstances of the particular case, to which the general words there made use of were to be applied. They seem to have understood them in their absolute and general sense, without considering their particular application to the case then under consideration; which was the case of a *parish-apprentice*, where the parish and the public are interested. The child was legally bound out by the parish officers till he should be 24, and the indenture was duly approved by two justices. The master, in consideration of 40s. paid to him by the apprentice, agreed to discharge him; and delivered up the indenture to the apprentice. The question was, Whether the *parish officers*, who bound him out under a special authority, ought not to have been con-

(b) *Post*, pl. 709.

sulted about discharging him, and to have given their consent to it? The whole policy of the 43 *Eliz. c. 2. § 5.* might be defeated, if the master and parish infant apprentice could, by their joint consent *alone*, without the consent of the *parish-officers*, discharge such a contract, and set the apprentice free from it. Such a construction would evade and invalidate this law. That case, therefore, is not applicable to the present. Here, the original contract was only between the father, the master, and the apprentice: and *all* of them consent to the discharge. An infant may make his condition *better*; though he cannot make it worse. The reason why an infant may bind himself apprentice is, because it is for his benefit. If he was discharged of the former indenture, he was at liberty to execute another. The case of *St. Mary Kalendar* (a) is in point: I see no distinction that can be made between it and the present case. The indentures were exchanged between the father and the master, by consent of the apprentice, who was clearly then under age; and *Lee C. J.* says, "The indentures did not subsist, because the *exchange* of the indentures amounted to a cancelling them, and a *determination* of the apprenticeship under them." — THE COURT concurred with LORD MANSFIELD.

(a) *Ante*, pl. 633.

637. *Rex v. Justices of Devonshire*, T. T. *Cald.* 32. 17 G. 3. — J. C. was born in the parish of *W.*, and about the age of seven years was bound to *R. E.* of *W.*, with whom he lived till 21; and then made an agreement with his master to give him one guinea to discharge him from his apprenticeship. *E.* gave him a discharge under his own hand. After different services he gained a settlement by hiring and service under *R. S.*, in the parish of *P.* The question was, Whether he was so far discharged from his apprenticeship by the above-stated transaction, as to be capable of gaining a settlement by hiring and service. — LORD MANSFIELD. I am of opinion, that if the indenture had not been *destroyed*, but remained in the master's hands, the apprentice would yet have gained a subsequent settlement in *P.* The master received a guinea of his apprentice, then at full age, for the express purpose of vacating the indenture. Why, could the master, after this, have used the indenture against the apprentice? So far from it, that the apprentice might have brought an action against the master for it. (b)

When a master receives money of his apprentice of full age to vacate his indentures, the relation is dissolved, though the indentures remain uncanceled.

638. *Rex v. Evered*, T. T. 17 G. 3. *Cald.* 26. — Two justices committed *R. C.*, an apprentice, to the Bridewell, for running away from his master. He had been bound, when an infant, for six years by indenture; and being now of age, he ran away, alleging afterwards that he did so with an intent to avoid the apprenticeship made when he was an infant, and to his prejudice (c). — LORD MANSFIELD. It has been adjudged, that an infant may bind himself for his own benefit; and it is settled in the case of *Rex v. St. Nicholas*, (d) that a binding for four years gives a settlement. — ASTON J. Supposing the indentures voidable, I cannot conceive that the apprentice's running away can avoid them. Had he served regularly, and during such service declared his intention to depart, it might have been different. Here he would

Indentures executed by an infant, whereby he binds himself an apprentice for six years only, are not void, though the 5 *Eliz. c. 4.* requires the binding to be for seven years.

(c) Note, he had run away twice before.

(d) *Ante*, pl. 631.

(b) See *Rex v. The Holy Trinity*, *post*, vol. ii. pl. 574. and *Rex v. Chipping Warden*, *post*, vol. ii. pl. 550.

make use of his offence in order to avoid the punishment that attends it; but it is too late to do it before a justice, when charged with a crime. — WILLES and ASHHURST Js. were of the same opinion.

In a common indenture of apprenticeship, under 5 Eliz. c. 4. between the father, son, and master, the father is answerable for what is to be performed by the son. See *Cuming v. Hill*, 3 B. & A. 59.

An apprentice after attaining the age of twenty-one years may vacate the indentures.

An apprentice leaving his master's service, and going into the King's service with his master's approbation is not a cancelling of the indentures. See *Ashecroft v. Bertles*, *post*, vol. ii. pl. 549.

639. *Branch v. Ewington*, M. T. 21 G. 3. Dougl. 518. — Covenant on an indenture by the master against the father of the apprentice. The indenture was in the common form, under the 5 Eliz. c. 4.; the plaintiff expressly covenanting to find the apprentice meat and lodging, the defendant to find him clothes and washing, and the apprentice, that he would serve faithfully, &c. and for the true performance of all and every of the said covenants, each of the said parties bound himself to the other. The breach assigned was, that the apprentice had absented himself from the service. — To this there was a *general demurrer*. — LORD MANSFIELD said, nothing was clearer than that the father was bound for the performance of the covenants by the son. — Judgment for the plaintiff.

640. *Ex parte Davis*, T. T. 34 G. 3. 5 T. R. 715. — BAILEY moved for an *habeas corpus* to bring up this person that she might be discharged from certain indentures of apprenticeship, entered into between herself of the one part and E. W. of the other part, whereby she bound herself to him as an apprentice for seven years; being therein described as of the age of 14, but, in fact, being above 17 years old at the time of the binding, and having now attained 21 and upwards; the indentures still subsisting. He grounded his application upon the principle that infants cannot be bound by indentures of apprenticeship beyond 21; but that they may dissent from them after they arrive at that age. — LORD KENYON C. J. It is clear that the apprentice must be discharged. Every indenture of an infant is voidable at his election: and in such cases the master must trust to the covenant of those who engage for the infant. But where the binding is under the authority of an act of parliament, that takes away the power of electing to vacate the indentures. But I know of no act which prohibits the party in a case like the present to make such election upon her coming of age. According to the argument of the counsel against the rule, an infant who improvidently bound himself till the age of 50 or upwards would be bound to serve till that time: but it is impossible to support such a proposition. This apprentice ought not to have been bound longer than till she was 21; and we ought now to discharge her. — The other judges concurred.

641. *Rex v. Hindringham*, H. T. 36 G. 3. 6 T. R. 557. — H. B., in March 1780, being of the age of 17, bound himself an apprentice to F. W., then of B., master mariner, for four years; and resided there, under his indenture of apprenticeship more than 40 days. When he had been an apprentice about 13 or 14 months, he went on shore from out of one of his master's ships, and entered into His Majesty's service as a sailor, with the consent of his master; but the indentures of apprenticeship were not delivered up or cancelled by the master during the term of his apprenticeship. He continued in the king's service about two years, and was then discharged; when he went to his father's house at D., and continued there for some weeks; and at Whitstide 1783 let himself to A. W., of H., from that time to Mi-

Michaelmas following; and at that *Michaelmas*, (which was the *Michaelmas* before the term of the indenture of apprenticeship would have expired,) the pauper let himself the following year to *Wilson*, and served him for that year in *H*. The term of years mentioned in the indenture of apprenticeship expired on the 2d *March* in the last year in which the pauper served *Wilson*. *F. Wills*, the master, lived all the time at *B.*, (except when at sea,) and *B.* is about six miles from *D.* and about the same distance from *H.* — LORD KENTON C. J. There is no ground for saying that the apprentice did any act to put an end to the indentures when he entered into the King's service. But I desire it may not be taken for granted that an infant, who binds himself apprentice, a contract so notoriously for his own benefit, may put an end to that contract at any time during his minority. I enter my protest against discussing that question now: it will be sufficient to determine it when it necessarily arises. In this case the pauper bound himself to *W.* by indentures under which he served in *B.* more than 40 days; afterwards when he was pressed into the king's service he agreed to go as a volunteer *with the consent of his master*, evidently implying that he did not then put an end to the indentures. It appears to me that the indentures still continued in force, and consequently that the pauper could not enter into a legal contract of hiring with *Wilson* at the time he engaged with him, he not being at that time *sui juris*. — PER CURIAM: Order of Sessions quashed.

642. *Rex v. Arnesby*, E. T. 1 G. 4. 3 B. & A. 584. — *Samuel Simcoe* was removed, by an order of two justices, from *A.*, in the county of *L.*, to *A.*, in the county of *N.* On appeal against this order it appeared, that the pauper had served some years, under an indenture of apprenticeship in *A.* The indenture stated, that *S. S.*, son of *S. S.*, of *K.* in the county of *N.*, glover, by and with the consent of his said father, did put himself apprentice to *W. S.* of *A.* in the county of *N.*, framework knitter, to learn his art, and with him, after the manner of an apprentice to serve, from the 10th day of *May* 1802, unto the full end and term of seven years, from thence next following to be fully complete and ended. It was, in all respects, regular, except that it was executed only by the father of the pauper and the master, and not by the pauper himself. The Sessions thought the indenture invalid, and quashed the order of removal. — ABBOTT C. J. The words of the statute of the 3 *W. & M. c. 11.*, are, "that if any person shall be bound an apprentice, by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement." Before, therefore, any settlement can be gained, the Court must see, that the party is bound by indenture. Now the ordinary mode is, for a party to bind himself, by executing the indenture. Even if he does not do that, still, in the special case of a parish apprentice, he may be bound without such execution: but then the binding takes effect by the authority of an act of parliament. This, however, is not the case of a parish apprentice, and unless we were to hold, that it is competent for a father to bind his son apprentice without his assent (for which no authority can be produced) we must hold this indenture to be invalid. The case of *Rex v. Houghton-le-Spring (a)* is very different. That was a case of hiring and service, the statutes applicable to which say nothing

A father has, at the common law, no authority to bind his infant son apprentice without his assent; and consequently, where an indenture of apprenticeship was executed by the master and the father of the apprentice, but not also by the apprentice himself: Held, that it was invalid, and that no settlement could be gained under it.

(a) *Ante*, pl. 584.

of the mode in which the contract of hiring is to be made; and there it was held that the deed executed by the servant, and his employment under it, were evidence to show the terms under which the hiring had been made. And I think that that decision was right. This case, however, stands upon very different grounds. I am, therefore, of opinion that the Sessions formed a right judgment. — BAYLEY J. I am of the same opinion. An infant can only bind himself apprentice by deed, and the question in this case is, Whether, according to the words of the act, this party is bound by indenture? The indenture, indeed, purports to bind the son, but the son has not executed it. It is said, however, that he has done that which is tantamount to an execution. If we were to hold that to be so, we should hold, contrary to all principle, that an infant might be bound by his act *in pais*, without executing the deed. In the case of a parish apprentice there is a special power given by the statute of *Eliz.* to parish-officers, and there an apprentice may be bound without his assent till he come of age. But a father has, at the common law, no such right. The passage cited from *Comyn's Digest* is unsupported by any authority. I think, therefore, that the indenture in the present case was invalid, and that no settlement was gained by the service under it. — HOLROYD J. I am of the same opinion. The apprentice did not gain a settlement by the service in this case; for an infant cannot be bound merely by an act *in pais*. It has been argued, that as he has taken the benefit of the deed by serving under it, he must be bound by it. But that argument is not, as it seems to me, available. In *Rex v. Cromford* (a) the apprentice had served out his time, and in *Rex v. Ripon* (b), the indenture was executed by the father of the apprentice and the master, with her consent, and she also served under it. Yet in both those cases the indentures were held to be invalid. According to my recollection the distinction is this: where a party takes the benefit of a deed, but does not execute it, he will not be liable under it as for a covenant broken, but he may be liable under the implied contract raised by the acts of benefit which he takes under it. Here the infant was not bound by indenture, and no settlement was gained. — BEST J. It seems to me that nothing has been said to show that the infant was bound by this indenture. There is no sufficient authority for saying that a father, at the common law, can bind his infant son apprentice without his assent testified by the execution of the indenture. It is said, that the service here was tantamount to an execution; but where is that argument to stop? It might go the length of proving that a service for a single day, and that, perhaps, without proof of his knowledge of the contents of the indenture, would bind the apprentice. The dictum to which we have been referred applies only to land *qui sentit commodum sentire debet et onus et transit terra cum onere*; and even there it would be a difficult point to establish that where a person took possession of the land for a single day, he was bound by all the covenants of a long lease, which he had never executed. It seems impossible to consider this as the case of a person bound by indenture; and unless that be so, he is not within the statute, and has gained no settlement. — Order of Sessions confirmed.

(a) *Ante*, pl. 510.(b) *Ante*, pl. 511.

IV. *Of the Stamp and Enrolment Duties.*

See stats. 8 Ann. c. 9. § 32. 35, 36, 37, 38, 39, 40, 43, 45. 9 Ann. c. 21. § 66. 18 G. 2. c. 22. § 24, 25, 26. 20 G. 2. c. 45. § 5, 6, 7, 8. 5 G. 3. c. 46. § 18, 19, 41. 44 G. 3. c. 98. 48 G. 3. c. 149. 55 G. 3. c. 184.

643. *Cuerden v. Leland, M. T. 4 G. 2. MSS.*—There was an agreement that *W. S.* should be put apprentice to *J. S.*, in the parish of *C.*, and he accordingly went to live with him there. At the ensuing *Whitsuntide* he was bound apprentice to him for seven years by *INDENTURE*; but the indenture was *antedated* as of the *February* before, when the apprentice first came. On executing the indentures *S.*'s mother paid 20*s.* to the master, which sum was mentioned therein, and *W. S.* served under these indentures in *C.* till his master's death; which was about three years. The duty of 6*d.* in the pound was never paid for the 20*s.*, nor was the indenture ever stamped with an additional stamp according to the act. — *Fortescue J.* upon this case being referred to him, thought the pauper had gained a settlement by the service at *C.* The justices, at their Sessions in *Michaelmas* 1730, discharged the first order of removal upon Judge *Fortescue*'s opinion; but these orders being removed up, it was moved to quash them, for that by the 8 Ann. c. 9. § 32. made perpetual by 9 Ann. c. 20. § 9., 6*d.* in the pound is laid as a duty on every 20*s.* given with apprentices not exceeding 50*l.*, and the indentures are to be stamped in six months after the date, and if not so stamped the indentures shall be void, and not available in any court or place, or to any purpose whatsoever; and the apprentice to whom the same shall relate, shall be utterly incapable of being free of any corporation, by virtue of such apprenticeship, or of exercising the intended trade or employment. It was argued in support of the order, that by the 13 & 14 Car. 2. c. 12. 40 days' residence in a place gains a man a settlement. That apprentices need not give notice, but that 40 days' residence gains them a settlement. It is true, that by this statute of Queen *Anne*, which is for granting a supply, it is provided, that indentures shall be stamped and returned into the office, and there are general words that the indentures shall otherwise be void and of no effect. But that cannot affect the present case; the act says no more than that the indenture shall be void, and the apprentice not at liberty to follow his profession. The question is then, from what time the indenture shall be void, which shall be not *ab initio*, but from the time fixed for paying the duty; for if the master live 50 miles from *London*, the duty is to be paid in three months; if 100, at six months, so that the apprentice gains a settlement before the duty is paid, *viz.* in 40 days, and the master not paying the duty cannot defeat the settlement which the apprentice had gained before. On the other side, it was said, that it is admitted that an apprentice gains a settlement if he serve 40 days under an indenture that can properly be called an indenture; but this is not an indenture by the express words of the act, and to say *Sumner* had gained a settlement is to aver against an act of parliament; for if he had gained a settlement it is available to some purpose. By 5 *Eliz.* c. 4. an indenture is necessary to make an apprenticeship; by this of Queen *Anne*, it is an incomplete indenture till stamped;

If the indentures are not stamped, and the duty is not paid, they cannot be given in evidence, nor are available to any purpose whatsoever. See *Rex v. Ditchingham*, vol. ii. pl. 505.

and when stamped it is good *ab initio*; but if not stamped all is void, or, at least, can be good but during the time given by the statute for stamping it, and may be compared to the case of a bargain and sale. By statute 27 Hen. 8. c. 16. all deeds of bargain and sale must be enrolled within six months; if not enrolled in that time, all matters consequent upon them cease and become void, but upon being enrolled all intermediate acts become good. Thus, if there be a deed of bargain and sale to make a tenant to the *præcipe*, the recovery shall be good till the time of enrolling be expired, but afterwards void *ab initio*. The words of the statute are a declaration by the legislature, that if an indenture of apprenticeship is not enrolled, no advantage can be had of the apprenticeship; and though the subsequent clause enumerates particular disabilities without mentioning this of not gaining a settlement, yet these particular disabilities were before comprehended under the general words; and it is common in statutes to mention particular cases which fall within the general words without restraining the general words, or enervating the force of them. As to the objection, that it is hard the neglect of the master should prejudice the apprentice, it is plain the legislature intended he should be prejudiced thereby in particular instances mentioned in the last clause, and why not in the present case?

— THE CHIEF JUSTICE and MR. JUSTICE PAGE were of opinion, that S. had gained no settlement by his service in C., on these words of the statute, which are very positive, that the indenture shall not be available in any court or place. — MR. JUSTICE PROBYN: The question is not on the meaning of the general words, but whether general words may not be restrained by particular words subsequent. Suppose the general words, as now, and that a man hath lands by a deed of bargain and sale, and takes an apprentice by indenture who lives with him 40 days, the apprentice will have a settlement, though the deed afterwards becomes void for want of enrolment within six months. — MR. JUSTICE LEE agreed with PROBYN; for 13 & 14 Car. 2. c. 12. directs that a pauper shall be sent to the place where he was last legally settled for 40 days, and it hath often been determined, that “legally settled” and “irremoveably settled” are equivalent terms (a), so that the party is actually settled in the place from which he is irremoveable for 40 days. Now S. was plainly irremoveable from C. from that time, which is the difficulty with me. — This case was ADJOURNED; but in citing it HARDWICKE C. J. said in the case of *St. Nicholas, Ipswich* (b), that it was determined on the words of the act, that the indentures shall not be available in any court or place.

(a) Sed qu. and see vol. ii.

(b) *Ante*, pl. 631.

If indentures be proved to have been executed, it shall be presumed that they were duly stamped, and the proper duty paid, unless the contrary appear.

644. *Rex v. East Knoyle, T. T. 13 & 14 G. 2. Burr. S. C. 151.* — It appeared upon evidence given, that the pauper had been bound an apprentice to *W. W.*; that he had served three years under the said apprenticeship; but that the indentures were not produced; neither did it appear that the 6*d.* in the pound, as directed by 8 Ann. c. 9. was paid, or whether the indentures were stamped. The objection was, that the Sessions should not have received parol evidence of the indentures, until it had been previously proved that the indentures were either lost or destroyed, and that it did not appear that the indentures were stamped or the duty paid. — But PAGE and CHAPPLE Js. were of opinion,

that as the case did not state, that the duty was not paid, or that the indentures were not stamped, it was sufficient; for the Court will never presume a fraud, if fraud be not expressly stated; and after length of time parol proof of apprenticeship shall be sufficient, because, in all probability, the indentures may be lost; and indeed they are frequently burned, when delivered up by the master at the end of the term.

645. *Rex v. Northowram, E. T.* 13 G. 2. 2 *Stra.* 1132. — The mother of a lad proposed to put him out apprentice to an inhabitant of *N.*, who refused to take him because he wanted clothes, upon which the grandfather agreed to pay 30s. to the master to clothe the boy with, in pursuance of which the master did lay out 30s. in clothes for the boy, and he was bound by indenture, in which no mention was made of the 30s., nor was any duty paid: the grandfather paid the 30s., and the apprentice served out his time, which the Sessions adjudged to be a settlement. — *LEE C. J.* The question is, Whether this 30s. be such a sum as ought to be inserted in the indenture, under the direction of 8 *Ann. c. 9.*? In the case of *Cuerden v. Leland (a)* the Court were bound to consider the indentures void, because they were not stamped; but the not inserting in words at length the full sum received, or directly or indirectly given, contracted, or agreed for, subjects the master to a forfeiture, but does not make the indentures void. In the present case, however, the master is to be considered as an *agent* to the grandfather for the clothing of the boy. The grandfather was obliged to repay him, and did, in fact, repay him the money. The clothing was before binding; so that it amounts to no more than putting a boy apprentice ready clothed. The statute means money given for the benefit of the master; but the master in this case has no benefit: he was not obliged to clothe the boy before he was his apprentice, and this agreement was executed before the indenture was sealed. — The other three justices were of the same opinion.

Where the master is only an agent for the apprentice's friends to lay out money for his use, no duty shall be paid. *S. C. Burr. S. C.* 145. 2 *Sess. Cases*, 196. and see *Rex v. Leighton, post*, pl. 654. and *Rex v. Portsea, post*, pl. 650. (*a*) *Ante*, pl. 648.

646. *Rex v. St. Peter's Chester, H. T.* 14 G. 2. *MSS.* — *W.* was legally settled at *St. M.* by a hiring and a service, and afterwards was bound an apprentice in *St. P.* to a carpenter for seven years, two of which he served in *St. P.*; but during those two years he lived, eat, and lodged at night with his mother in *St. O.*'s. The indentures were not executed by his master, nor stamped for the consideration-money, nor did any consideration-money appear to have been paid or agreed to be paid by the indentures. *W.* died, and his wife and children becoming chargeable in *St. O.* were removed to *St. M.*, the husband having gained no other settlement in *St. O.* The case of *Rex v. St. John's in the Devizes (b)* was cited. — *LEE C. J.* It has been objected, that the indentures are not stamped with a sixpenny stamp; but as that part is not stated in the orders, I do not see how it can come before the Court; for we cannot take notice of any thing but what is strictly before us. It is not found in the orders that the indenture is not stamped with a sixpenny stamp, but that it is not stamped for the consideration-money; and there being no consi-

Where there is no consideration-money given with an apprentice, the indentures do not require a stamp; nor is it essential that the master should execute them.

(b) *Foley*, 220. 8 *Mod.* 285. *Ld.* order of Sessions is set out *verbatim*. *Ray.* 1371. *Stra.* 594. *Sett. & Rem.* See *Cald.* 542. *notis.* 120. *Fert.* 321. *fo.* 156. where the

(a) See *Rex v. Fleet*, post, pl. 715.

Indenture not stamped cannot be given in evidence.

Sixpence only being given with an apprentice, the indentures need not be stamped. *Burr S. C. 379. S. P. Rex v. Yarmouth, Burr. S. C. 379. Sayer, 170.*

On parol evidence of the existence of an indenture, the Sessions may presume that the indentures were stamped and the duty paid.

An indenture of apprenticeship, in which it is covenanted that "sufficient

deration-money paid, the stamp is not required. It is farther objected, that this indenture is not good, because not executed by the master (a), but that makes no difference if the apprentice himself was bound. — The order was affirmed.

647. *Rex v. Llanvari, Dyffryn Clwyd, T. T. 17 & 18 G. 2. Burr. S. C. 236.* — An infant was bound out an apprentice by his father by indenture which was not stamped. It was ruled, that the indenture not being stamped could not be given in evidence, being void to all intents and purposes.

648. *Baxter v. Faulam, E. T. 19 G. 2. Wilson, 129.* — The question was, Whether an indenture of apprenticeship, where 6d. was mentioned to be the sum given with the apprentice, be or be not void for want of being stamped, according to the statute 8 Ann. c. 9. § 32. ? It was resolved by THE WHOLE COURT, that the statute intended, that when above 50l. was paid with an apprentice, a twentieth part thereof should be paid for the duty, and one fortieth part when less than 50l. was paid; and this is a case wherein it is well known that there is no coin small enough to pay the duty in; and it seems by the two stamps of 1s. 6d. in the pound, that no sum less than 20s. paid with an apprentice should pay any duty; and this case falls under the saying of *de minimis non curat lex*, and there was no occasion to have this indenture stamped, according to the statute.

649. *Rex v. Badby, E. T. 12 G. 3. MSS.* — The case stated, that S. R. the pauper was the natural son of H. B., single woman, and was born in the parish of C.; that, as appears by the register of C., the pauper was baptized on the 26th of March 1733; that A. R. was the reputed father of the pauper; that when the pauper was between five and six years of age, being then at nurse at 2s. 6d. a week, A. R., the reputed father, executed AN INDENTURE to N. R., stonemason at B., in the said county, whereby it was agreed that the pauper was to serve R. from that time until the pauper was 21 years of age, as an apprentice, but that the pauper did not execute the indenture; that the consideration-money in such indenture being 5l., was paid by A. R., the reputed father, to R.; that it appearing to the satisfaction of the Sessions that the indenture of apprenticeship could not be produced, parol evidence was admitted of its existence, execution, and contents; that it was not proved whether the duty for such consideration was or was not paid; that the pauper for the first two years was put to school by R. to read and write, and afterwards for two or three years to learn to spin jersey, and continued with R. in B., 13 years or thereabouts, from the time of executing the indenture; that he then, by consent, left his master's service, the indenture remaining uncanceled; and that he has not since gained a settlement. The Sessions adjudged it to be a settlement, by virtue of the apprenticeship. — ASTON J. said, it ought to go down again to the Sessions; if the Sessions had presumed payment, it would have been sufficient. — WILLES and ASHHURST Js. being of the same opinion, the order was sent back again to be restated.

650. *Rex v. Portsea, T. T. 16 G. 3. Burr. S. C. 834.* — An indenture of apprenticeship, duly executed by T. R., the master of the pauper, covenanted that "sufficient meat, drink, apparel of all kinds, physick, surgery, and lodging, and all other necessaries

"during the said term, to be *found and provided* for the said apprentice BY THE SAID FATHER; which the said father, for himself, his executors and administrators, doth *covenant and agree* to find the said apprentice during the said term: for which *purpose*, the said master is to allow him or them the sum of 4s. per week, weekly, during the said term." It was also covenanted and agreed, "that if the apprentice shall absent himself, or negligently lose any time, then the payment of the said 4s. per week, or the proportionable part thereof, is to be deducted for the same; and the said father, his executors and administrators, is to make good or pay the damage thereby sustained, to the said master." THE INDENTURE was offered in evidence: which was objected to, because the DUTY had not been paid for the lodging, board, physick, and surgery, covenanted to be found by the father, and because the indenture had not been stamped with the additional stamp denoting the 6d. or 12d. in the pound, agreeable to 8 & 9 Anne. To this it was answered, that the 4s. per week was an equivalent; and the additional stamp unnecessary: and the indenture was admitted in evidence. T. R., the master, was called and asked, Whether a *parol agreement* was not made, at the time of signing the indenture, that he the master should not pay for the first two years of the apprenticeship the 4s. per week? But this was objected to, because it tended to contradict that deed which he had executed. Whereupon the Sessions determined this question should not be asked. — THE COURT were unanimous upon both points. As to the former, there was nothing before them to show that the 4s. a week was not an equivalent: and why should it not be so? It might be an ample one: they were not to presume that it was not an equivalent. It appears to be allowed by the master to the father for the purpose of thus providing for his son. The case of *Pennington v. Sudall* is no authority: the point was not determined. (a) — ASTON J. hinted, that the 8 Ann. c. 9. § 45.

meat, drink, apparel of all kinds, physick, surgery, lodging, and all other necessaries, during the term, shall be found and provided by the father of the apprentice, and that the master shall allow him 4s. a week, weekly, during the said term," is not such an indenture on which the additional stamp directed by 8 Ann. c. 9. § 45. is necessary.

(a) The plaintiff Pennington claimed to be admitted to his freedom of the borough of Lancaster by an apprenticeship; and the question was, Whether the indentures of apprenticeship ought to have been given in evidence, in which there was a covenant on the part of the plaintiff's father and mother, to provide him meat, drink, washing, lodging, and clothes? and the master covenanted, that his executors, &c. will, for the first half of the term, pay to the said apprentice 5l. per annum, and for the other half 6l. 6s., in consideration of his faithful service and of the due performance of the covenants. Plaintiff was afterwards assigned, and by the deed of assignment the father and mother covenanted as before, for providing plaintiff with meat, drink, washing, and lodging; and the master covenanted to pay to the father for and towards the maintenance and bringing up of his son after the rate of 6l. per annum. These indentures were stamped with a 2s. 6d. stamp; but neither

the indentures nor the assignment had ever been stamped, or any additional duty paid, in respect of the apprentice or his friends finding and providing board and lodging for the apprentice during the term. — Mr. Davenport argued, that the indentures ought to be admitted in evidence, because the master was not bound to maintain an apprentice with meat and drink, unless the apprentice expressly covenants for it; for though a master is bound to provide a servant with these articles, yet he is not to provide an apprentice, the apprenticeship commencing by covenant, and the apprentice claiming nothing but by virtue of the covenant, which is not the case with a common hired servant, and therefore the master could not be considered as having any thing assigned to him in respect to his apprentice for the master's benefit, by reason of the father's agreeing to maintain him: that if it could be possibly esteemed a benefit, it was merely negative, and must arise from calculation. — Mr. Norton,

which says, "that where any thing or things, *not being lawful money of Great Britain*, shall directly or indirectly be given," means *such* other equivalents as a horse, or other valuable thing of that sort; *not* such an agreement as this is, "to provide necessities for a son." (a) As to the second point, they all held, that the master was *not* bound to answer the question which the appellant's counsel put to him.

(a) Burr. S.C. No. 48.

An agreement of apprenticeship entered into with a view to save the expence of indentures, and to avoid the payment of the duties imposed by the 8 Ann. c. 9. § 32. is void, and of no effect. See S.C. vol. ii.

An indenture in which an apprentice covenants, "that he would at his own expence provide for himself meat, drink, washing, lodging,

651. *Rex v. Highnam*, H. T. 25 G. 3. EDITOR'S MSS. — R., when 17 years of age, went to E., for the purpose of being his apprentice for four years, and paid him 4*l.* 4*s.* in consideration; but to save the expences of indentures and duty, he and his master signed an agreement on unstamped paper, whereby R. covenanted to serve E. for four years; E. to pay to R. 4*s.* 6*d.* a week for the first year, 5*s.* for the second year, and 6*s.* for the third and fourth years. And it was further agreed by parole, that R. should find his own diet and lodging, be his own master on Sundays, and not be paid for the time he should absent himself from work. — LORD MANSFIELD: It is manifest, even on the face of the written agreement, that a fraud on the revenue was intended: it is clear that an apprenticeship was meant; but by the 8 Ann. c. 9. a certain duty is imposed on an agreement of this description, and this duty not having been paid by the master as the act directs, the agreement is void.

652. *Rex v. Walton in Le Dale*, H. T. 30 G. 3. 3 T. R. 515. — The indenture contained, besides the usual covenants, a covenant on the part of the pauper, that he would at his own expence provide for himself meat, drink, washing, lodging, apparel, and physic, at all times during the term; and also a covenant on the part of the master, to pay the pauper for the first, second, and third years 5*s.* per week, for the fourth and fifth years 6*s.* per week, and for the sixth and seventh years 7*s.* per week. The indenture also contained a proviso, that in case the pauper

é contra, contended, that this case was within the 8 Ann. c. 9. § 45. which directs, that the master shall pay a duty for any benefit which is contracted for by his apprenticeship; that the father's agreement to give the apprentice meat, &c. was a benefit to the master, because it relieved him from a burden which the law would impose on him; that the law would impose such a burden on him must be plain from this consideration, that if a lad was put an apprentice at a great distance from his parents, he could not go to his meals without losing his time, and the advantage of acquiring knowledge in the most advantageous manner, by living with his master at all times in the day; and he said, there can be no difficulty to ascertain the *quantum* of the benefit the master receives, for the office keeps a person on purpose to estimate such sorts of benefits. — Mr. Wallace agreed, as the Court thought there was some difficulty in the case, to admit the apprentice. — Aston J. There never was an

indenture without providing that the master should covenant to find meat, drink, &c. which is a sufficient argument to prove the obligation of the master; but if there was no such covenant, the law would compel the master to do it. — Willes J. There seems to me to be a great nicety in the case. — Lord Mansfield: I am glad the Court is relieved by Mr. Wallace's agreement; but here occurs to me a difficulty; upon the face of the deed there appears to be a benefit arising to the master, by the father's providing meat, &c. and how can the judge enter into a discussion to prove, whether the master pays an equivalent to the father for taking a burden off his hands? From this difficulty it should rather seem the duty should be paid. — This case came on again in H. T., and after it was argued, the Court directed it to stand over, for the agreement to be fulfilled which Mr. Wallace proposed, by admitting all persons in the same situation as the present plaintiff.

should be visited with sickness, and thereby rendered unable to perform his work, or should neglect to do or perform the same, he should not be entitled to any wages during the time he should be so indisposed, or visited with sickness, or should neglect to work: and in case he was not employed at the business for which he was bound, then the master should be at liberty to reduce one half of his wages for two months yearly during the term. The indenture was written on the proper stamp; but no additional duty was paid according to the 8 Ann. c. 9. It was insisted, that the indenture was inadmissible in evidence, and void, not only for want of a stamp for the additional duty, but also on account of the nature of the contract, and the clauses contained in the indenture. — LORD KENYON C. J. The case of *Pennington v. Sudall* (a) cannot be taken as an authority deciding any thing. If we were to infer any thing from the case, it would rather be the reverse of that which has been supposed; because the case went off on an agreement to admit the apprentice to his freedom, which could only have been done under the idea that he had served a legal apprenticeship. The principal question relative to the additional stamp duty, cannot be decided on this case, as it is now stated. I believe it is the practice at the stamp-office to set a value on these sorts of benefits as a matter of course, when the indentures are carried to them. Now here the apprentice stipulated to provide himself with certain things, which, it is said, the master is bound by law to provide for him, and for which it is contended an additional stamp-duty ought to have been paid, because it is a benefit to the master; but, on the other hand, the master was to make certain weekly payments to the apprentice. Then how can we say these payments were not an equivalent for the maintenance, &c.? I believe they are much more. But before we can decide the material question, the justices must find the fact, whether these payments were or were not an equivalent. I therefore studiously avoid giving any opinion on the general question: and it is enough for me to say at present, that it does not appear but that the master gave an equivalent for the benefit which he received. — BULLER J. I do not see any thing like a benefit to the master, for which an additional duty ought to have been paid. The master covenanted to pay the apprentice so much *per week*; that clearly is not within the statute. Then it was provided, that in case the apprentice should be ill and unable to perform his business, or neglect to do it, he should not receive any wages; but this was no benefit to the master, it was only an agreement that he should not pay, but not that he should receive any thing.

653. *Rez v. St. Petros, Dartmouth, H. T.* 31 G. 3. 4 T. R. 196. — The case: *J. Hambling*, the father of the pauper's husband *Hambling* deceased, having been told by the parish officers of T. that they would give him 20s. to bind out his son an apprentice, if he would find a place for him, did in July 1768 agree with *Mary Hayne*, widow, who occupied a farm in S., to bind his son *Hambling* deceased, then aged about eight years, an apprentice to *Richard Hayne*, son of *Mary Hayne*, who was then between the age of 14 and 15, and was then resident in his mother's house as a part of her family, and had no habitation or business of his own. When this agreement was made between *Hambling* the father and *Mary Hayne*, they also agreed that he, *Hambling*, should pay to

apparel, and physic, at all times during the term, and that the master should pay him 5s. a week for the first three years, and 7s. a week for the remainder of the term," does not require the additional stamps imposed by 8 Ann. c. 9. § 45. (a) *Ante*, pl. 650 n.

Money given by the parish officers (in the case of a voluntary binding) as the consideration of taking an apprentice, is not liable to the duty imposed by the 8 Ann. c. 9. § 35. for it comes within the exception to

it in \$ 40. as being at the public charge of the parish; neither is any duty payable for any consideration-money, unless it be given to the master or mistress of the apprentice.

(a) Which was then the proper stamp.

Mary Hayne 20s. as a consideration for such apprenticeship; but it did not appear that *Mary Hayne* knew that any promise was made by the overseers of *T. to Hambling*, with respect to the advancing of any money to him for this purpose. *Hambling* the father afterwards received 20s. from the churchwardens and overseers of *T.*, 5s. of which he paid to *Mary Hayne*, and promised to pay her the rest at 5s. a time, but applied the remaining 15s. to his own use. It appeared by the indenture of apprenticeship, dated 21st July 1768, that *Hambling* the son, of his own free will, and with the consent of his father, voluntarily bound himself apprentice to *Richard Hayne*, of *S.*, till he should attain the age of 21, to learn the art of husbandry. This indenture was stamped with a half-crown stamp (a); but had no stamp thereon for the consideration-money.—LORD KENYON C. J. It has been very properly admitted, that this indenture was not absolutely void, on account of the infancy of the parties, but only voidable; and that unless there be some other objection, the pauper is entitled to the benefit of the apprenticeship. But it has been contended, that it is void on another ground, namely, for the want of an additional stamp for the consideration-money of 20s. given with the apprentice; and that this does not come within the proviso in the statute of *Anne* relative to sums given with apprentices at the public charge of any parish, or by or out of any public charity. But I think there is no foundation for the argument. We must consider this to be a fair binding to the son, because the Sessions have not stated that it was fraudulent. Then if it were, as it professed to be, a binding to the son, and not colourably to the mother, the statute requires no duty for the consideration-money, even though the money were not raised at the charge of the parish. The act of parliament, taking it altogether, undoubtedly imposes the duty on money paid to the master or mistress only; for it says, "That every master or mistress to or with whom, or to whose any sum shall be given, paid, secured, or contracted, for or in respect of any such apprentices," &c. Now here the master did not receive the money which was given with the apprentice, but for reasons (not here stated) his mother received it; and it is not stated that she received it as agent for her son. But even supposing that the master had received or contracted for the consideration-money, it was not subject to the duty imposed by the statute of *Anne*, because it was money raised at the common and public charge of the parish of *Townstall*, and as such it comes within the proviso in that act. It was assumed in argument as a proposition, that there can be no binding of any parish apprentice within the meaning of this proviso, unless it be a compulsory binding under the 43d of *Elizabeth*, with the concurrence of two magistrates. But that cannot be the construction of that statute; for one of the purposes of raising rates for the relief of the poor was to put out children apprentices at the expence of the parish. That is not restrained to the case of a compulsory binding, which is under a subsequent clause. And the object of that act is as well answered by a binding with the consent of the parents, as by a compulsory binding without their interference: all that is required is, that the binding should be obligatory on the children. If the parents discharge their duty to their children, then there is no necessity for the interference of the magistrates and parish-officers; but if the

parents neglect their duty, or are not able to procure masters, then the parish officers are bound to interpose, and they stand *in loco parentum*. Then in this case the consideration-money was advanced by the parish-officers it came out of a fund excepted by the statute of *Anne*. Therefore on both the points, first, that there was no money for which any duty was payable under any circumstances; or, secondly (if there were), that it was excepted in this case, as the money was paid at the public charge of the parish, I am of opinion that the pauper gained a settlement in *Slapton* by serving under this indenture; and consequently that the order of Sessions should be quashed. — ASHHURST J. It is not necessary to go into the first objection, that the money was paid to the master of the apprentice, and not to his mother, because the other objection is decisive, namely, that this money was paid out of the public fund of the parish. Though the legislature, in passing the statute of *Elizabeth*, might have chiefly provided for the case of a compulsory binding, yet it cannot be supposed that that act does not extend to voluntary bindings at the public charge of the parish. This was a binding at the public expence of the parish, and therefore comes within the exception in the statute of *Anne*.

654. *Rex v. Leighton*, T. T. 32 G. 3. 4 T. R. 792. — In an indenture for four years, to learn the trade of a shoemaker, was a covenant by the father of the apprentice, that he would, at his own charge, find and provide for his son good, competent, and sufficient meat, drink, and lodging, on every *Sunday* in the year during the term; and would provide him with clothes and apparel of all sorts, except working aprons and shoes, and also washing. There was also a covenant on the part of the master to provide for the apprentice meat, drink, and lodging, except on *Sundays*, during the term. The indenture was properly executed, and attested, and written on a 5s. stamp. The pauper's father expended 5*l.* and upwards in clothing his son, and in providing meat, drink, &c. for him on *Sundays* during the four years under this covenant; for this no additional duty was paid, according to the stat. 8 Ann. c. 9. — LORD KENYON C. J. This has been *vexata questio* ever since I came into *Westminster-hall*; and various opinions have been entertained upon it. It is true, that if an indenture be taken to the Stamp-office, they will set their value upon every supposed benefit to the master, for the sake of the revenue; but that is by no means decisive. The question depends on the stat. 8 Ann. c. 9. § 22. & 45.; the former of which sections imposes a duty on all sums of money given with any apprentice, &c.; and the latter enacts, that where any *thing*, not being money, shall be given, contracted for, or secured, to or for the use or benefit of the master, the duty shall be paid for the full value of such thing, in the same manner, &c. The latter provision was inserted for the purpose of protecting the revenue from any fraud which might otherwise be practised by the parties giving something in lieu of money. For if, as in the case put by *Aston J.* a horse, or other valuable thing of that sort, be given by the friends of the apprentice to the master, that must be considered to be a benefit to the master, for which a duty should be paid. It occurred to me early in the argument, that in order to see what would or would not be considered as a benefit to the master,

If the friends of an apprentice covenant to maintain him, and to provide him with clothes, it is not such a benefit as is liable to the duty imposed by 8 Ann. c. 9. § 45.

it was necessary to inquire, what were the duties that resulted from the bare relation of master and apprentice. And I think that the statute of 8 & 9 W. 3. c. 30. § 5. throws a great deal of light upon that point; because, if from the time of the statute of *Elizabeth* to that time, masters could not be compelled to provide for parish-apprentices, and that law was made for the purpose, it shows that the obligation of providing for apprentices did not result from the mere relation of master and apprentice; for, if it did, that part of the statute of W. 3. was unnecessary. The case of parish-apprentices is the only one where an apprentice can be put out *volens volens*; all the others depend on the express stipulations to be made by the parties interested. It has never been held that the obligation of the master extended to the providing of clothes for the apprentice, and yet I cannot distinguish that from the obligation to provide sustenance; for the former are equally necessary with the latter; and in other cases than those of parish-apprentices clothes are generally provided by the friends of the apprentice. But if every thing is to be valued, and a duty set upon it, from which a benefit arises to the master, it might be equally said, that the earnings of the apprentice should be liable to the duty. The argument, therefore, that every benefit which the master derives from the apprentice, by proving too much, proves nothing. The authority of *Aston J.* is in all cases worth resorting to, but particularly so in cases of Sessions law, in which he was remarkably conversant. And his opinion in the case alluded to is very strong to this point. I think, therefore, that the clear meaning of the statute of *Anne* is, that where money, or money's worth, is given to the master by the friends of the apprentice, by way of premium, a duty ought to be paid for it; but that where meat, clothes, &c. are to be provided by the master, no duty is payable, because there is not any thing given to the master. — *BULLER J.* The construction which *Aston J.* put upon this act of parliament, seems to be a sound one, and is warranted by the words of the statute, which are, "that where any thing, not being money, shall directly or indirectly be given, &c. contracted for, or secured, to or for the use or benefit of any master," &c. Then by the very words of the act it must be something contracted for, or given to or for the use of the master, *independently of the apprentice*. The statute then goes on to say, "with or in respect of any apprentice for whom a duty is chargeable by the act:" this refers to the 32d section, where the words are, "sums which shall be given, paid, contracted, or agreed for, with or in relation to every apprentice," &c. Now all these terms mean something which is given to the master, or contracted for; and only apply to cases where the master is to derive a benefit from the friends of the apprentice, independently of the benefit to be derived from the apprentice himself; and, therefore, whatever is given for the advantage, benefit, or accommodation, of the apprentice, does not fall within the meaning of this clause. What was said by the Court in *Res v. North Oworm* (a) strongly supports this determination. There the grandfather agreed before the binding to give the master 30s. to clothe the apprentice, the master having refused to take the apprentice unless he were better clothed; and the Court said, "it is not a premium received by the master;

(a) *Ante*, pl. 645.

"the statute means something given directly or indirectly for the benefit of the master." I am, therefore, of opinion, that what is given for the benefit of the master must be paid for; but that what is given for the benefit of the apprentice is not within the words of the act of parliament. — GROSE J. When we consider the nature of an apprenticeship, the words of the act of parliament, and what has been said in other cases, this question does not admit of much doubt. What is an apprenticeship, but the putting out a young person to a master to teach him his trade? Instruction on the one hand, and service on the other, are the objects of apprenticeship. But sometimes it happens that certain apprenticeships are likely to prove lucrative to the parties, and parents are induced to give large sums of money for the purpose of having their children instructed in particular kinds of business. This the legislature considered as a fair object of taxation: but, as frauds might have been committed on the revenue if the tax had been confined to money only, this provision was made in the act extending the duty to "things" as well as money. Still, however, the legislature only intended to tax those things which were given in lieu of money as a premium to the master to teach the apprentice his trade. This construction of the act appears strongly to be confirmed by what fell from *Ashton J.* in the case of *Rex v. Portsea*, (a) as well as by what was said in the case mentioned by my brother *Buller*. Therefore, on the reason of the thing, on the words of the act of parliament, and and on the authorities, I am of opinion, that this benefit to the apprentice was not a "thing" for which a duty is payable under the statute.

(a) *Ante*, pl. 650.

655. *Rex v. St. Paul's, Bedford, M. T.* 36 G. 3. 6 T. R. 452. — An apprentice was, by a written agreement assigned over to another master for the remainder of the term; and THE COURT were of opinion, that it was necessary to the validity of the agreement that it should be stamped pursuant to the statute, 23 G. 3. c. 58.

An agreement to assign an apprentice must be stamped. See S. C. post, vol. ii. pl. 575. 604. A master stipulating for 4d. out of every 1s. of the earnings of his apprentice is no benefit to him within the stat. of Anne, for which an additional duty is to be paid; being by law entitled to the whole.

656. *Rex v. Wantage, T. T.* 41 G. 3. 1 East, 601. — Two justices removed T. S. from W., to the parish of St. P. The Sessions quashed the order, subject to the opinion of this Court on the following case: T. S. the pauper being settled in the parish of St. P., was bound apprentice to Mr. T., for the term of seven years, and served there for 18 months. The indentures were lost; but parol evidence being admitted, it appeared, that the pauper was to find himself in clothes, board, washing, and lodging: that the master was to allow him full journeyman's wages, but was to have 4d. out of every shilling of the pauper's earnings. The indentures were stamped; but no duty was paid for any consideration reserved to the master. — LORD KENYON C. J. said, it was impossible to argue that a part of the apprentice's earnings reserved to the master was a benefit to him within the meaning of the statute, when by law he was entitled to the whole, and might rather be considered to have given up that part which he did not reserve than to have acquired any thing. — PER CURIAM: Order of Sessions confirmed. (b)

(b) See *Rex v. Leighton, ante*, pl. 654.

657. *Rex v. Keynsham, T. T.* 44 G. 3. 5 East, 309. — The pauper T. M., being legally settled at K., was bound apprentice for seven years to J. C., who resided at B. The sum of 5l. 5s. was agreed to be paid by the father to the master as a premium, and

Where a sum agreed to be given with an apprentice was 5l. 5s. which

was inserted in the indenture, and the duty paid accordingly, by stat.

8 Ann. c. 9. held well, though in fact only 4*l.* 4*s.* were paid; for the full sum received, given, paid, agreed, or contracted for, as required by the act, was inserted, and the duty paid for it, and the stamp used was of the same description and the duty appropriated to the same fund as if 4*l.* 4*s.* only had been inserted and paid for, supposing that would have sufficed.

was the sum inserted in the indenture. But the only sum which appeared to have been paid was the sum of 4*l.* 4*s.*, which was paid at the time of dating and executing the indenture. The Sessions, considering the indenture as void under the stat. 8 Ann. c. 9. confirmed the original order of justices, by which the pauper, his wife and child had been removed from the parish of *W.* to the parish of *K.* It was admitted on the argument of the case, that the duty had been paid on the sum *contracted for*. — GROSS J. In construing the act of parliament, we must attend to the intention of the legislature, which was to raise a revenue by the payment of certain duties upon indentures of apprenticeship, &c., and to take care that the public were not defrauded of the fair duty. For this purpose the act requires (§ 35.) “that the full sum of “money received, or in anywise directly or indirectly given, paid, “agreed, or contracted for,” with the apprentice, “shall be truly “inserted in words at length” in the indenture, &c. under a certain penalty; and then the subsequent clause (§ 39.) avoids the indenture “if the sum received, given, paid, secured, or contracted for,” be not so truly inserted. Now, by requiring the full sum to be inserted, it meant that not less than the sum upon which the duty was really payable should be inserted: and here not only the full sum, but, in truth, more than the sum for which the duty was payable has been inserted, and the duty paid upon such larger sum. There has, therefore, been no fraud upon the public, but the whole which the act required, and even more, has been complied with: and, therefore, there is no ground for the objection. — LAWRENCE J. Even supposing that the exact sum which the master had contracted for and was entitled to receive with the apprentice were required by the act to be inserted, still the objection would not hold in this case. For it appears that 5*l.* 5*s.*, which is the sum inserted in the indenture, was the sum contracted for; and though the master has, in fact, only received 4*l.* 4*s.*, yet I know no reason why he may not recover the remainder in an action. The objection would have been more plausible if 4*l.* 4*s.* only had been inserted in the indenture, and the duty paid upon that. Taking it, however, that the 4*l.* 4*s.* only which have been in fact received by the master, were all he was to have, still the words of the act have been complied with, requiring the full sum paid to be inserted; for here the full sum paid, and more, has been inserted, and the duty paid upon it. The case of *Farr v. Price*, (a) does not apply; because there the stamp used was one appropriated to notes of a higher denomination. The stamp duties raised by different acts on different instruments are appropriated to the payment of the interest of different funds; and if the proper stamp appropriated to the specific instrument were not made use of, though an equal or higher stamp, intended for a different instrument, were used, the interest of the fund might turn out deficient for which the duty was imposed. In that case the stamp used was not the stamp required by the act of parliament for a note of that amount. But no such objection arises here: the duty imposed, whether more or less in the particular instance, is all applicable to one fund, and the same description of stamps is required. — LE BLANC J. If the act is to be construed according to the intention of the legislature, it is clear that such intention has

(a) 1 East, 55.

been complied with in this case; and if we look to the words of the act, they will be equally satisfied by what has been done. The intention of the legislature was to raise a stamp duty in proportion to the sum paid with the apprentice. For which purpose they have required, by § 35, that the *full sum* received or in anywise given, paid, agreed, or contracted for, shall be inserted; and by § 39. the indenture is avoided in which shall not be inserted the full sum received, or given, paid, secured, or contracted for, "or whereon the duties payable by this act shall not be duly paid, &c. according to the tenor and true meaning of this act." Now the *full sum*, according to the tenor and true meaning of the act, has been inserted; and the *proper stamp* appropriated to this description of instruments has been used; which differs this from the case cited. — Orders quashed. (a)

658. *Rex v. Long Buckby*, M. T. 46 G. 3. 7 East, 45. — Two justices by an order removed *W. L.*, S., his wife, and their children by name, from the parish of *Long Buckby* to the parish of *N. P.* The Sessions, on appeal, quashed the order, subject to the opinion of this Court on the following case: The pauper *W. L.*, who was the illegitimate son of *M. L.*, was born in the parish of *N. P.*, and in the year 1774 or 1775 was bound apprentice by indenture to *J. D.*, of *Long Buckby*, shoemaker, for seven years, for a premium of 12*l.*, which was paid, and the indenture regularly executed by the pauper, his mother, and *D.*, the master, with whom the pauper served his full time in *Long Buckby*. Only one indenture was executed, which after seven years was given to the pauper, and was proved to have been lost. For 12 years past the pauper had resided at *Long Buckby*, during which time he had been often relieved by that parish, and had received *town's money* from it; which *town's money* is given away at *Christmas to parishioners*: and no further evidence was given by the appellants. But the respondents proved by the deputy-register and comptroller of the apprentice duties, that it did not appear that any such indenture had been stamped with the premium-stamp, or inrolled, from the year 1779 to the 16th of *July* 1805. The respondents insisted that the appellants ought to have given further proof of the payment of the duty, and of the enrolment: but the Court were of opinion that after the length of time elapsed they might presume that all had been rightly done. And the pauper having done no other act to gain a settlement, the order was quashed. — When this case was called on, *Dayrell* was to have supported the order of Sessions: but THE COURT desired to hear what objection could be urged against the presumption which the justices had made from length of time, which did not appear to be an unreasonable presumption. — MORRICE, *contra*, said, that the justices could not properly presume that every thing had been rightly done when the indenture was executed, against the evidence adduced by the stamp-officer to show that the duty had not been paid; for if the duty had been paid, the presumption was that it would have been inrolled at the head-office in *London*, in the usual and proper manner. — LORD ELLENBOROUGH C. J. The question before the justices was, whether the presumption that all was rightly done, after the elapse of so many years, were sufficiently rebutted by the

The Sessions presumed that an indenture of apprenticeship executed 30 years before, and under which the apprentice had regularly served his time for seven years, when the indenture was given up to him, and proved to be lost, and when the parish in which he was settled under such indenture had relieved him for the last 12 years was properly stamped in proportion to the apprentice fee of 12*l.* received by the master; although the deputy register and comptroller of the stamp duties proved that it did not appear in the office that any such indenture had been stamped or inrolled during that period; and the judgment of the justices was confirmed in *B. R.*

(a) Vide *Taylor v. Hague*, 2 East, 414. S. P.

negative evidence of the officer: they thought not, and we cannot say they have done wrong; for the presumption of law is to be favoured; and against the negative evidence they may have set the possibility of an irregularity in the returns made to the office.

— *PER CURIAM*: Order of Sessions confirmed. (a)

In an indenture of apprenticeship, a covenant by the apprentice to allow his master 2s. a week, and to have wages, and provide for himself during the term, does not require the additional stamp required by 44 G. 3. c. 98. upon an indenture where a sum of money is contracted for by the apprentice.

659. *Rex v. Bradford*, *H. T.* 53 G. 3. 1 M. & S. 151. — Removal from *B.* to *T.*, order quashed, subject, &c. — The pauper being of age, by indenture bound himself apprentice to *D. F.*, of *B.*, for a term, in which indenture was a covenant in the following words: "He, the said pauper, doth agree to allow his said master 2s. *per* week, weekly and every week, and to have (leaving a "blank") wages, and provide for himself for the above-said term." The pauper duly served his master for the said term in *B.*, and the 2s. a week agreed to be allowed, were regularly deducted out of the wages which he constantly received during his service. The indenture was upon a 15s. stamp; and it was objected, on the part of the respondents, that, under the 44 G. 3. c. 98. *Sched. A.* (which requires in an indenture of apprenticeship, where the sum or value given, paid, contracted, or agreed for, with the apprentice, shall exceed 10*l.* and not exceed 20*l.*, that the stamp should be 1*l.* 10*s.*) this indenture required a stamp of 1*l.* 10*s.*; and, therefore, the indenture was void. — *ELLENBOROUGH C. J.* If the words of the covenant were transposed, they would run thus; the pauper to have wages, and to allow his master 2s. *per* week, and then there could be no doubt of their meaning an allowance out of the wages simply; and what difference does the order in which they now stand make in the sense? It, therefore, can never be considered as a boon to the master, who, instead of having the labour of his apprentice for nothing, which he was entitled to have, agrees to pay him wages, deducting 2s. *per* week out of them. — *Lx BLANC J.* The master had a right to the whole of the earnings, but allows, by way of wages, such a sum as they are computed at, minus 2s. *per* week, on account of his providing for himself. — *BAYLEY J.* concurred. — Order of Sessions confirmed.

Where the mother of an apprentice, whose time had not expired, applied to his master to give him up to her, and the master having consented to it, and all having agreed to part, the apprentice went away; but the indenture, which was in the hands of a third person, was never applied for nor given up: Held, that the apprenticeship

660. *Rex v. Skeffington*, *H. T.* 60 G. 3. and 1 G. 4. 3 B. & A. 382. — Two justices by their order removed *T. H.* and *R.* his wife, from the parish of *H.* to the parish of *S.* The Sessions, on appeal, confirmed the order, subject, &c. The respondents proved a hiring and service in *S.* by the pauper *T. H.*, from *Martinmas* 1812, to the following *Martinmas*. The appellants then gave in evidence an indenture of apprenticeship, dated 1805, by which the pauper bound himself apprentice to *W. D.*, of the parish of *St. Mary, Leicester*, for the term of ten years. A premium of 12*l.* was stated in the indenture to have been paid to *D.* with him by the churchwardens and overseers of the parish of *Tugby*, which was also stated to have been paid by them out of a charitable donation fund belonging to that parish. No evidence, however, was given of the premium having been paid out of a charitable fund, except the above statement on the face of the deed, and the declaration of the parish-officers at the time they paid it, that it was charity-money. The deed was objected to as not having any stamp, but the objection was over-ruled. The pauper served under the indenture for four years in the parish of *St. Mary, Leicester*, when

(a) Vide *Rex v. East Knoyle*, *ante*, pl. 644. and *Rex v. Badby*, *ante*, pl. 649.

his mother applied to *D.* to give him up to her, she saying she had procured another master. The master said she might have him and welcome. They all agreed to part, and the boy went away with his mother. The indenture remained in the hands of the overseers of *Tugby*, and was never delivered either to the boy or his mother, nor applied for by any of the parties; but the master said he would have given it up if it had been at the time in his possession. The overseers of *Tugby* afterwards applied to *D.* to take the boy again; but he said he would not, adding, unless the magistrates make me take him again, I have done with him; and he never heard any thing more on the subject. — ABBOTT C. J. If it had been shown in the present case, that this apprenticeship had ever been well constituted, I should have been of opinion, upon the authority of the case of *Rex v. Bow*, which has been cited here, that the agreement between the parties in this case was not sufficient to put an end to the indenture. I think, also, that the fund out of which the premium is said to have been paid, was a public charity within the meaning of the exception in the stamp-act. But I think that there is no sufficient evidence in this case to show that the premium was, in fact, paid out of such a fund. It is stated in the case, as a fact proved by the master, that a premium of 12*l.* was paid with the apprentice. That being so, it would be very dangerous to say that the declaration of the parish-officers should be admitted to prove the nature of the fund out of which it was paid, more especially when those persons might have been called to prove the fact. The case is not precisely the same as if a declaration of the parish-officers had been offered as the only proof of payment. In that case the whole declaration would have been receivable. But here the fact of payment was itself proved. Upon that ground I am of opinion that the indenture ought not to have been received in evidence; and, therefore, that the Sessions had nothing before them to show that the pauper was not *sui juris* at the time when he served for a year in *S.* The order of Sessions must, however, be confirmed, because their ultimate decision, although founded on wrong grounds, was correct. BAYLEY J. I am entirely of the same opinion. The respondents having proved a case of hiring and service, it became the duty of the appellants to show that there was, at the time, a subsisting valid apprenticeship. In order to do that, they produce an indenture, which, on the face of it, purports that a premium has been paid, and which is not stamped. Now, if that premium was paid out of a public charity, it was the duty of the appellants to prove that fact, which was within their knowledge, and of which the respondents could know nothing. An indenture of apprenticeship is no evidence of the facts recited in it. — If it were, the inconvenience pointed out in argument would occur, that in order to defraud the revenue a party might always recite that the premium was paid out of a public charity, whether the fact were so or not. But it is said that if the payment of the premium be proved by the indenture, this recital also becomes evidence. That answer is not, however, sufficient; for it is plain upon this case, that, independently of the indenture, there is direct evidence of the fact of payment. I think, therefore, that on the evidence this was a void indenture. — HOLROYD J. If the recital in the indenture of apprenticeship, and the declaration of the parish-officers, had been

was not put an end to by this agreement, although the master said that he would have given up the indenture if he had had it in his possession at the time, and afterwards refused to take back the apprentice. Secondly, where an unstamped indenture of apprenticeship recited that a premium of 12*l.* had been paid; but added, that it was paid out of a charitable donation fund belonging to the parish, and the master being called, proved that the premium had been paid by the parish-officers, who told him at the time of paying it that it was charity money: Held, that the fact of payment being proved, the recital in the indenture, and the declarations of the parish-officers, were not admissible in evidence, so as to bring the case within the exception in the 44*G. 3. c. 98.* § 190., and that the indenture, being unstamped, was void. Semble, that a charitable donation fund belonging to a parish is a public charity, within such exception.

the only evidence of the fact of payment of the premium, I should have been of opinion that there was sufficient evidence also, that it was paid out of a public charity. But, on looking at this case, it is clear to me that that fact was proved substantially by the master. If so, the Sessions decided wrong in receiving the indenture in evidence without a stamp. Their ultimate decision was, however, right, for they confirmed the order. — Order of Sessions confirmed.

An indenture of apprenticeship, executed before the passing of the 44 G. 3. c. 98. must be stamped with the premium stamp within the time prescribed by the statute 8 Ann. c. 9. and where such an indenture was stamped at the time of its being produced in evidence, with the stamp required by the 55 G. 3. c. 184. but not within the time prescribed by the statute of Anne: Held, that the indenture was wholly void, and that the pauper, by serving under it, gained no settlement.

661. *Rex v. Chipping-Norton*, H. T. 2 G. 4. 5 B & A. 412.— Upon an appeal against an order of two justices, whereby *J. E.*, widow, and her six children, were removed from the parish of *A.*, in the county of *N.*, to the parish of *C.*, in the county of *O.*; the Sessions confirmed the order, subject, &c. By indenture of the 30th October 1794, *W. E.*, the late husband of the pauper, *J. E.*, and the father of her children, not being then settled in the parish of *C.*, bound himself to serve *R. P.*, of *C.*, as an apprentice for seven years, and *R. P.*, in consideration of 25*l.*, the sum given with the apprentice, covenanted to instruct him in the business of a cooper. The indenture was duly stamped, with a stamp denoting the payment of the several duties, amounting in the whole to 6*s.*, imposed by different statutes upon the indenture itself; but it was not stamped with any stamp in respect of the premium, as required by the statute 8 Ann. c. 9., within the time required by that statute, nor until the making of the order of removal, and after the entering of the appeal against the order. Before the hearing of the appeal, the indenture was stamped, upon the payment of 5*l.* penalty, and of 1*l.*, with a stamp denoting payment of a duty of 1*l.*, being the *ad valorem* duty stamp used to denote the payment of such duty under the 55 G. 3. c. 184., and 1*l.* being the duty payable under that statute, in respect of a premium of 25*l.* given with an apprentice. The duty payable in respect of the like premium under the 8 Ann. c. 9., was 12*s. 6d.* only, the duties payable under both the last mentioned statutes, were, after they were paid into the exchequer, applicable to the same purposes. The stamps used by the commissioners, under the 55 G. 3. c. 184., are of a different sort from those which were required to be procured, and used by the statute 8 Ann. c. 9., which were poundage stamps. These stamps were used until the passing of the 44 G. 3. c. 98.; which imposed an *ad valorem* duty, and the poundage stamps were disused, and the dies with which they were formed were then broken up, and are not now in existence. *W. E.* served under the indenture in *C.*, until the expiration of seven years from the date thereof. — ABBOTT C. J. I am of opinion that this indenture was void, not having been stamped within the time required by law, and, consequently, that the pauper gained no settlement by serving under it. By the statute 8 Ann. c. 9. § 32. a premium stamp is imposed, and by § 36. indentures signed within the limits of the weekly bills of mortality, were required to be stamped within one month after the date, and by § 37. every indenture entered into elsewhere in Great Britain, shall be either stamped within two months, or brought within that time to some collector or officer appointed for the management of these duties, who shall indorse a receipt for the duty paid, bearing date on the day of payment. By § 38. indentures executed within 50 miles, to be computed from the

limits of the weekly bills of mortality, shall be stamped within three months, and if at a greater distance, within six months after the date or making thereof. By § 39. all indentures not stamped within the respective times for that purpose limited by the act, are declared void, and not available in any court or place, or to any purpose whatsoever. Here, therefore, the legislature expressly requires that the instrument shall be stamped within the prescribed time, and declares that, in case of omission, it shall be void to all intents and purposes, and that forms a distinction between this case and those that have been cited in argument. The order of Sessions must, therefore, be quashed.—Order of Sessions quashed.

V. Of the Apprentice Fee.

See stats. 8 Ann.c. 9. 18 G. 2. c. 22. § 25. 44 G. 3. c. 90.

662. *Thurman v. Abel*, T. T. 1688. 2 Vern. 64. — The defendant being an apothecary, the plaintiff put his son to him as an apprentice, and gave with him a sum of money, and allowed the youth 10*l.* a year for his clothes. The defendant put away his apprentice after he had lived some time with him by reason of negligence and misdemeanours laid to his charge. — THE COURT decreed the master to refund 30*l.* of the money; and the rather, because the indentures were not *inrolled*, so as the matter was not properly cognizable before the chamberlain of London.

A proper proportion of an apprentice fee shall be refunded, though the apprentice be discharged for misconduct.

663. *Soam v. Bowden*, M. T. 30 Car. 2. Finch, 396. — The master received with the apprentice 250*l.* and died within two years, the apprentice having for that time been employed only in inferior affairs. It was decreed, that, after debts on specialities paid, the executors should repay the 250*l.* as a debt due on simple contract; deducting after the rate of 20*l.* a year for the maintenance of the apprentice, during the time he had lived with his master.

On the death of the master, a proportion of the fee shall be repaid.

664. *Ex parte Sandby*, 1 Atk. 149. — The petitioner, on the 10th of January 1744, was put apprentice to W., and the sum of 80*l.* was given with him as an apprentice for seven years. In July following, a commission of bankruptcy was taken out against W., and he being declared a bankrupt, assignees were chosen, who sold off the bankrupt's effects. The bankrupt was incapable of performing his part of the contract, nor was the petitioner able to raise any money to put himself out an apprentice to another master, and, the commission being a recent one, probably no dividend might be made in a year, or a year and a half; so that all this time would be lost to the petitioner. Upon these circumstances, the petitioner prayed that on deducting 10*l.* out of the 80*l.* for his board with the bankrupt during the six months he lived with him, the assignees should be ordered to pay him the sum of 70*l.* out of the effects of the bankrupt already come to their hands, and not oblige him to prove it as a debt under the commission. — The LORD CHANCELLOR HARDWICKE was at first doubtful, and seemed inclined to grant the petition; but on ordering search to be made for precedents, and several being produced wherein it was directed that apprentices should come in as creditors only, after deducting for the time they lived with the bankrupt, upon the remaining sum, it was ordered accordingly in

If a master become bankrupt, the apprentice shall be admitted a creditor for a reasonable proportion of the apprentice fee.

this case, and that the petitioner should be admitted a creditor for 70*l.* only.

VI. Jurisdiction of the Justice and the Sessions.

See stats. 5 *Eliz. c. 4.* § 35. 47. 20 *G. 2. c. 19.* § 4, 5, 6, 7. 6 *G. 3. c. 25.* § 1. 3, 5, 6. 33 *G. 3. c. 55.* § 1. 4 *G. 4. c. 29.* 4 *G. 4. c. 34.*

1 Black Com.
428.

A master cannot compel his apprentice to go beyond the seas.

S. C. Brownl.
67.

665. *Brook's Abridgment*, 57. — Non-payment of wages, or insufficiency of meat and drink, are good causes of departure, or if the wife of the master beats the servant.

666. *Coventry v. Woodhall*, *H. T.* 13 *Jac.* 1. *Hob.* 134. — The plaintiff brought an action of debt for 20*l.* The condition was, That whereas one *R.* had bound himself apprentice to the defendant for eight years, the defendant did covenant with the plaintiff, that he would retain, teach, keep, and employ the said apprentice in his own house and service, in the art of chirurgery, during the term, and bound himself in 20*l.* for performance of those covenants. And then it is showed, that within the term the defendant sent his said apprentice in a voyage to *B.*, which he pleaded to be in the company of other expert chirurgeons, the better to learn the art: whereupon the plaintiff demurred, and judgment was given for him, for it was expressly against this covenant; for though the covenant were not so restrained to the house in meaning, but that he might send his servant or apprentice in other places about his cures, yet he must be still as one of his household, coming and going, and in his service, and not put over to any other; for the matter of putting an apprentice is a matter of great trust for his diet, for his health, for his safety; and, therefore, a parent or guardian will by choice commit him to one, and not to another. And, generally, no man can force his apprentice to go out of the kingdom, except it be so expressly agreed, or that the nature of his apprenticeship doth import it, as if he be bound apprentice to a merchant-adventurer, or a sailor, or the like.

The Sessions, by 5 *Eliz. c. 4.* may discharge an apprentice from a bad master, and a master from a bad apprentice. See *S. C.* 1 *Mod.* page 2. and the cases there cited.

S. P. 2 *Show.* 289.
1 *Mod.* 286.

667. *Hawkesworth v. Hillary*, *M. T.* 21 *Car.* 2. *Saund.* 315. — An order was made at the Sessions discharging *H.* on account of several misdemeanours committed by him in his apprenticeship from his master *Hillary*: and the other states, that this master refused to entertain him any longer, and orders the said apprentice should be discharged from his apprenticeship, and that his master should restore to him 60*l.*, part of the 100*l.* which he acknowledged he had received with him, and that this be a final order, &c. and the apprentice committed till he find good security for his good behaviour. It was objected, that the Sessions had exercised an authority not warranted by the 5 *Eliz. c. 4.*, which it was said gave the magistracy only authority to punish, not to discharge an apprentice. — But it was the opinion of THE WHOLE COURT, that an apprentice may be discharged from a bad master, and a bad apprentice discharged from his master; and the clause which gives power to punish a bad apprentice does not restrain but enlarge the power of magistrates (over apprentices) beyond the power given them over the masters, and that the magistrates may inflict corporal punishment, or discharge an apprentice at their discretion.

668. *Du Hamel's case*, 'E. T. 35 Car. 2. *Skinner*, 108. — An apprentice, upon complaint to the Sessions, was discharged by their order for default of the master, who was ordered to restore part of the money, and deliver up the indentures. — SAUNDERS C.J. said, That the justices having authority to discharge the apprentice by the 5 *Eliz. c. 4.*, it was a power incident to their authority to order part of the money to be returned, and the indentures to be delivered up; and he cited a case where part of the was money returned, though the apprentice was discharged for his own fault.

The Sessions may order part of the money to be returned, when the apprentice is in fault.

669. *Anonymous*, T. T. 35 Car. 2. *Skin.* 114. — A poor boy who had been put out apprentice by the justices, after three years' service, plainly appeared to be an idiot, incapable of learning his trade. Hereupon his master was discharged of him, and he was sent back to his parish by an order of Sessions. — PER CURIAM: This is a good order. It would be hard upon the master to keep one who could do him no service, while the parish should go free.

Apprentice appearing to be an idiot may be discharged. See *Brownl.* 67. *Hob.* 194.

670. *Woodroffe v. Farnham*, T. T. 6 W. & M. 2 *Vern.* 291. — PER CURIAM: By the custom of London a master can justify turning away his apprentice for frequenting gaming-houses, and may justify it before the chamberlain.

Gaming.

671. *Anonymous*, H. T. 35 Car. 2. *Skin.* 98. — Four justices at a private sessions had discharged an apprentice, and afterwards at a general sessions the justices set that order aside; and THE COURT held, that an apprentice could not by 5 *Eliz. c. 4.* be discharged but at general sessions.

Justices at a private sessions cannot discharge apprentices.

672. *Ditton's case*, E. T. 1 W. 3. 2 *Salk.* 491. — Exception to an order of Sessions for the discharge of an apprentice, that the master was bound over but did not appear; and it is expressly directed by the act, that the discharge is to be made on the appearance of the master. Besides, there is another remedy, to proceed on the recognizance, which is forfeited by non-appearance. — PER CURIAM: The act must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy; otherwise, if the master run away, the apprentice can never be discharged.

The Sessions may discharge an apprentice though the master do not appear.

1 Mod. 2.
5 Mod. 139.
Salk. 68.

673. *Anonymous*, M. T. 7 W. 3. *Salk.* 470. — If an apprentice be discharged from his master, the statute requires that the discharge should be under the hands and seals of four justices of the peace; but in a *certiorari*, to remove the order, it is sufficient in the return to take notice of the order so made, for it is not necessary to certify the discharge itself.

Rem. 132.

674. *Stephenson v. Holditch*, H. T. 1694, 2 *Vern.* 491. — An apprentice in London had married without the privity of his master, yet that would not justify his master in turning him off, but must sue his covenant.

The order of Sessions must be under the hands and seals of the justices. S. C. Sett. and 6 Mod. 182.

Marriage.

675. *Rex v. Gately*, M. T. 7 W. 3. *Salk.* 471. — *Green* was bound by indenture in this manner to *Gately*, a surgeon, "to learn the trade he now useth." Upon complaint of *Green*, that his master (who was a mountebank) did not instruct him in his art of surgery, but made him learn to dance upon the rope, &c. the Sessions discharged him. Exception was taken to the order, that by it the servant was discharged from his master, whereas the discharge should have been mutual. Secondly, Because the statute

The power of the Sessions to discharge apprentices extends only to such trades as are specially named in the statute.

S.C. Carth. 196. 366.
 5 Mod. 189, 140.
 1 Saund. 313.
 1 Vent. 174.

5 *Eliz. c. 4.* with regard to discharging apprentices extends only to apprentices mentioned in that clause of the statute, and there neither surgeon nor mountebank is mentioned; and though a *surgeon* may be a trade within the statute, so far as that a man cannot execute it without serving an apprenticeship to it, because that clause of the statute is general, yet this part of the statute relating to the discharge of apprentices extends only to trades there mentioned. Thirdly, The order is not under the seals of the justices, which is expressly required by the statute. — *PER CURIAM*: As to the first exception, the discharge of the servant is the discharge of the master. As to the second, the clause of the statute relating to the discharge of apprentices is general, and goes to all manner of apprentices, even to those of a *merchant*, as it was adjudged in *Hawkesworth v. Hillary*. (a) But afterwards THE COURT was of opinion, that the power of discharging reaches only to the trades mentioned in the statute, among which a *surgeon* is not mentioned, for that although, as to the serving seven years' apprenticeship, a surgeon comes under the general terms, "arts and mysteries," yet the power of discharging reaches only to the trades particularly mentioned. (b) — But HALE C. J. was of another opinion.

(a) *Ante*, pl. 667.

The Sessions have original authority to discharge apprentices.
 S. P. 1 Stra. 704.

676. *Rex v. Johnson*, T. T. 13 W. 3. Salk. 68. — An apprentice was discharged by an original order made at the Sessions, without any previous application to a justice of the peace, to endeavour to compromise the matter as the statute directs. After several debates, THE COURT declared, that if it had been *res integra*, they should have held a previous application to a justice necessary; but as so many original orders made at Sessions had been confirmed here, it was too late to call the matter in question. And as to the second objection, that the justice had ordered money to be returned, that was held to be a power consequential upon their jurisdiction to discharge.

The order of Sessions must state that the defendant appeared or was summoned.
 S. P. 1 Stra. 143.

(c) *Ante*, pl. 667.

677. *Rex v. Rutter*, E. T. 10 Ann. MSS. — The defendant applied to a single justice, under 5 *Eliz. c. 4. § 35.* complaining of the misconduct of his apprentice; but on defect of relief he made application to the Sessions, where an order was made that he should be discharged from his apprentice. — MONTAGU objected, that it did not appear upon the face of the order, that either the master or the apprentice were present; and he cited the case of *Hawkesworth v. Hillary*. (c) — PARKER C. J. The master must be there; for if the matter cannot be made up by the justice, he must bind the master to appear in a recognizance at the next Sessions; and if he do not appear, the recognizance will be estreated.

The order of Sessions must be inrolled.
 3 Vin. Abr. 27.

678. *Rex v. Hales-Owen*, T. T. 4 G. 1. Str. 99. — On an objection to an order of Sessions discharging an apprentice, WILLES moved, that the statute only empowers the justices to discharge for *misbehaviour*, and not for *sickness*; beside, they have not executed their authority as the statute requires, for the order is not enrolled. — Both these exceptions to the form were held good; and the order was quashed.

(b) See also *Rex v. Furnese*, Sett. & Rem. 21. accord. Sed vide *Rex v. Collingburne*, post pl. 680. by which it appears to be now determined, that the

authority of the Sessions extends to other trades than those mentioned in the statute.

679. *Rex v. Hales-Owen*, T. T. 4 G. 1. Str. 99. — The Sessions reciting that J. H. was bound out by indenture, as the statute requires, and being lame, having the king's evil, and in the opinion of surgeons incurable, for that reason they discharge the master from his apprentice: but THE COURT quashed the order as to the substance, for the master takes him for better or worse, and is to provide for him in sickness and in health.

680. *Rex v. Collingburne*, M. T. 12 G. 1. Str. 663. — There was an order of Sessions for the discharge of an apprentice to a freeman of the city of London, who was bound and enrolled there: and the order being removed hither, these exceptions were taken to it. First, That the apprentice was bound and enrolled in London. Second, That he was not bound by the justices. Third, That the binding was not a trade within the statute, the master being a glazier. To the third exception it was said, That formerly, indeed, it was a doubt whether the statute did extend to all trades, but of late it hath been settled and agreed that it does. (a) — THE COURT affirmed the order of discharge, and said, they would not take away the jurisdiction of the mayor's Court, but only give a concurrent jurisdiction to the justices of the peace for the county. And it would be very inconvenient to have apprentices to a freeman of London, who are bound there, and who live in distant countries, obliged to come up to the mayor's Court to get themselves discharged: and the words of the statute are very plain, for they give the jurisdiction to the justices where the apprentice lives.

681. *Rex v. Davis*, T. T. 12 G. 1. 1 Str. 704. — Order of Sessions for discharging an apprentice; the only reason given for which discharge being, that the master in open court declared that he would not take him again, was quashed.

S. C. 1 Sess. Cas. 283. S. P. *Rex v. Heaseman*, post, pl. 683.

682. *Rex v. Amies*, H. T. 6 G. 2. MSS. — Mr. STRANGE moved to quash an order of Sessions for discharging one Stannard from his apprenticeship to a carpenter, and returning the apprentice fee: First, That it was not one of the trades mentioned by the 5 Eliz. c. 4. § 3. & 31., and therefore the justices had no jurisdiction. Secondly, Admitting the Sessions to have an original jurisdiction, it does not appear that the master had any money with the apprentice. Thirdly, They have no authority to order restitution of the money. Fourthly, That it does not appear upon the face of the order that the master appeared, or was summoned and made default. — PAGE J. There must be a summons, but it need not be set forth in the order; neither is it necessary to say that the master was heard, for summons and default are equal to appearance. — PROBYN J. doubted as to the summons not being stated in the order, but said, that the justice may order restitution, as incident to the power of discharging. — LEE J. This is an original proceeding at Sessions, and therefore notice is necessary; for notice is of the essence of justice. If the application had been first to the justices, and the parties had gone to Sessions, the other side must have taken notice. In order it is not necessary to state the notice. — The first objection was given up.

The Sessions cannot order an apprentice to be discharged on account of his being afflicted incurably with the king's evil.

A is bound an apprentice to B, who is a freeman of the city of London; and being bound and enrolled there, then goes and lives with his master in Middlesex. The justices of the peace for the county have a concurrent jurisdiction with the city, and may discharge the apprentice. S. C. Sess. Cas. 285.

Ld. Ray. 1410.

The Sessions cannot discharge without cause.

The Sessions may order an apprentice to be discharged, and money to be returned, though bound to a trade not mentioned in the act; but the order must state that the defendant appeared or was summoned, and made default; and that the master had received money with the apprentice.

(a) Salk. 471. Palm. 526. 2 Keb. 822., and the case of *Rex v. Taunton*, H. T. 6 G. 1.

Sessions have original jurisdiction in discharging apprentices. It must appear that the party appeared. S. C. Stra. 1014.

(a) *Ante*, pl. 681.

Sessions cannot discharge an apprentice except on appearance or default of the master.

(b) Stra. 296.
2 Bur. K. B. 99.
Sess. Cas. 233.

The master's using the apprentice unkindly, and refusing to take him again, are not sufficient reasons for discharging him from the indentures.

An apprentice cannot object before the justices that he was discharged from the indentures because bound for a less time than the 5 Eliz. c. 4. requires.

683. *Rex v. Houseman*, E. T. 8 G. 2. *Annelley's Rep.* 101. — First exception to an order of Sessions for discharging an apprentice, That this is an original application to the Sessions, whereas they have not an original jurisdiction. Secondly, That if the Sessions have an original jurisdiction, yet it is limited, upon the appearance of the master, or some default made by him, which ought to be shown in the order; and nothing of that appears on this order. Thirdly, That the jurisdiction is not rightly exercised, for the reason they give is for *unkind usage* from the master; and though the order says farther, that the master refused to continue him in his service, or to entertain him according to the indentures, that will not make it better; as in *Rex v. Davis* (a), an order stated that the master declared he would not take his apprentice, and held to be no sufficient reason. — LORD HARDWICKE: The latter cases have been, that the Sessions have an original jurisdiction, though it were to be wished that justices out of Sessions had prior jurisdiction, as being less expensive; but the application which the 5 Eliz. c. 4. § 35. directs to be made to a private justice seems to mean only to arbitrate and accommodate the dispute. The statute says, "if he cannot compound the matter, he is to take bond for the parties' appearance at the Sessions; so that they are not to take it up by appeal. The Second objection, I think, is not to be got over. In cases of *convictions* appearance has always been held necessary; but in cases of *orders* in general the Court will presume *omnia rite esse acta*; and that distinction between orders and convictions was confirmed in the case of *Rex v. Lloyd*. (b) But then that presumption is only in the case of orders upon statutes which do not in express terms require an appearance; but now we are upon an act which gives the justices authority to proceed upon the appearance of the party, so that it is made an essential requisite by the act to found their jurisdiction. As to the third exception, in general, it is not necessary to set out the reason of their judgment; but here the act requires it, and it is rightly said, that *using unkindly* is not such *misusing* as is intended by the act: and if the following reason, his refusing to let him continue in his service, is to be understood of an absolute refusal to let him continue with him, and not only as a refusal to entertain him according to his articles, that neither will be a ground for this order, because the justices have a power to compel the master to take him again, as was done in the case of *Rex v. Davis*. However, this is more doubtful; but on the second exception the order must be quashed.

684. *Rex v. Evered*, T. T. 17 G. 3. *Cald.* 26. — Two justices committed an apprentice to bridewell, for running away from his master. He had been bound, when an infant, for six years by indenture; and being now of age, he ran away, alleging that he did so with an intent to avoid the apprenticeship made when he was an infant, and to his prejudice. — HEATH had moved for a rule to show cause why he should not be discharged: and, to avoid delay and expence, it was agreed that the rule should be so taken, with liberty to the Serjeant to take all objections against the form of the commitment, as if it had been returned on a *habeas corpus*. — LORD MANSFIELD: It has been adjudged that an infant may bind himself for his own benefit; and it is settled in the case in *Strange*, that a binding for four years gives a settlement. — ASHTON J. Supposing the indentures voidable, I cannot

conceive that the apprentice's running away can avoid them. Had he served regularly, and during such service declared his intention to depart, it might have been different. Here he would make use of his offence in order to avoid the punishment that attends it; but it is too late to do it before a justice, when charged with a crime. — WILLES and ASHHURST Js., being of the same opinion, on this ground the rule would have been discharged. — But, as upon a return to a *habeas corpus*, LORD MANSFIELD said, that the objection to the warrant of commitment, as running in the disjunctive, must undoubtedly have prevailed, the counsel for the prosecution consented to the prisoner's discharge.

685. *Ex parte Gill*, E. T. 46 G. 3. 7 East, 376. — ESPINASSE moved for a writ of *habeas corpus* to bring up this person, an apprentice, who had bound himself at the age of 18 years to serve till 25, and who, after he was 21 years of age, had been committed to the House of Correction upon a conviction before two magistrates, founded on the stat. of 20 G. 2. c. 19. at the suit of his master, for a misdemeanor in absenting himself from his service; *Gill* having insisted before the magistrates that the indentures which had been executed by him when an infant were not binding upon him after he came of age, but that he might elect to avoid them, as he had done, before the offence alleged. And he cited the case *Ex parte Davis* (a) as in point. And now the return to the writ made by the keeper of the House of Correction was produced; which set forth a regular conviction of this party under the statute for a misdemeanor in absenting himself from his master's service, and refusing to obey him, wherein nothing appeared of the objection arising from the age of the party. — Whereupon THE COURT said, they could do no otherwise than remand the party; for it appeared by the return that he was committed in execution upon a regular conviction; and that however the circumstances now laid before the Court by affidavit might, if well founded, be matter of defence against the charge before the magistrates, they could not be examined by the Court now. That if the defence had been properly made before the magistrates, and they had disregarded it, the party had a remedy against them; but that this Court had no authority to direct that the apprentice should be discharged from his indentures; and that there was a mistake in that respect in the report of *Davis's* case; the judgment of the Court there being that the apprentice should be discharged out of the custody of her master, in whose custody she was when brought up before the Court. — The party was remanded.

was proper matter to be shown to the magistrates below; who, if the matter shown to them were true, act at their own peril in committing the party; but this Court have no power to discharge an apprentice from his indentures; and are bound by the return of a regular conviction, where the objection does not appear on the face of the return, to remand the party. (a) *Ante*, pl. 681.

Where, upon a *habeas corpus* to bring up the body of an apprentice, the keeper of the House of Correction returned, with the body of the party, a regular conviction of him by two magistrates on the statute 20 G. 2. c. 19. for a misdemeanor in absenting himself as an apprentice from his master's service; it is no answer to show by affidavit that the party had bound himself when an infant to serve till 25, and that when he came of age he elected to avoid the indentures, after which the offence imputed had been committed; for this

VII. Of assigning Apprentices: and the Death of the Parties.

686. *Dalton*, c. 58. — If the master assign his apprentice, and the apprentice consent to such assignment, yet this will not make him an apprentice to the assignee under 5 Eliz. c. 4.; but by the custom of London an apprentice may be turned over to another master.

687. *Wadsworth v. Executors of Guy*, M. T. 16 Car. 2. 1 Keb. 820. and 1 Sid. 216. — In an action brought upon a covenant to

An apprentice cannot be assigned except by custom. 1 Wils. 96.

On a covenant to instruct and maintain an ap-

prentice, the personal representatives of the master are liable for a breach of it.

instruct an apprentice, or cause him to be instructed, in the trade of a saddler, and to find him in meat, drink, and lodging during the term, the plaintiff showed the testator's death, and that such a day he was turned out of doors by the defendant, *et sic conventionem fregit in hoc*, viz. not instructing him, and not finding meat and drink. To which the defendant demurred, because it is a personal covenant and discharged by death, and cannot be assigned; as *Hob.* 134. & 116., and 48 *Edw.* 3. c. 2. being no custom. — But ALL THE COURT inclined to the opinion, that if it had been only to instruct, it had been discharged; but being complex, “to instruct and find meat,” it is not; and if it were, yet the breach is sufficiently assigned if either part be true, as here, in turning him out. — Judgment for the plaintiff.

The assignment of an apprentice by executors is not good, though the apprentice subscribes the assignment.

.688. *Rex v. Channel*, T. T. 27 Car. 2. 3 Keb. 519. — The defendant was bound apprentice to A. who died, and the executors of A. by indenture assigned the defendant to T. for the residue of the term of three years; to which the defendant agreed, by writing his name and assent upon the indenture of assignment. The question was, Whether by all this he was such an apprentice as by 5 *Eliz.* c. 4. § 9. is indictable for his departure from T.? CREAMER, for the defendant, urged, First, That this is an interest, and so was well assignable over by the executor of A. as before bound by the statute of 43 *Eliz.* c. 2. § 5. executors are chargeable. But, Secondly, This is a new binding by the defendant's assent to the indenture of assignment, though an infant and no party to the indenture. Against this it was said, that though this be an interest, yet it is gone by the party's death; as in the case of a servant hired for a year, he is not bound to serve the executors of the master. And though by 45 *Eliz.* c. 2. executors should in point of charge be liable, yet they are not in point of contract, to instruct an apprentice in trade as the master is, and by the common law an infant was not bound to serve; but by 5 *Eliz.* c. 4. § 43. if he be bound by indenture he is compellable to serve, which being an abridgement of the common law is *stricti juris*: but were it never so favourably taken, this bare assent by indorsement will not amount to a binding by indenture, being not party; and so there being no special custom, as in London, alleged for the turning over, the defendant is no apprentice, and consequently may depart, which THE COURT agreed; and the plaintiff not proving the first indenture, the defendant was discharged.

Executors and administrators are not obliged to provide for an apprentice.

.689. *Rex v. Pett*, T. T. 4 W. & M. Shower, 405. — A pauper was put out an apprentice to B., on whose death administration was committed to the defendant. The apprentice falling sick, and becoming chargeable to the parish, the justices made an order on the defendant to receive and provide for him; which order was confirmed at the Sessions. — Shower now moved to quash these orders, for that the jurisdiction of the justices is only over the person of the master, and does not extend to his executors and administrators: that such a construction would produce infinite confusion in the law. For suppose no assets, shall the justices try that? Shall this expence and charge be pleadable to any and what suit by creditors? If the administrator live in another parish or county, must the apprentice be sent after him? Then if he prove poor himself, the parish where he lives must be burthened with the apprentice. If there be covenants in the indenture which reach

the executors, those may be saved, and then we have liberty to plead it; but at present by this order we are settled, &c.—*PER CURIAM*: The order must be quashed.

690. *Rex v. Chaplin*, *E. T.* 7 *W. 3.* *Comb.* 224. — Justices made an order that an apprentice whose master was dead should serve the remainder of his time with his master's widow's second husband. The order was quashed; for the justices have not power to turn over an apprentice, and his applying to them could not give them jurisdiction.

Order that apprentice should serve his master's widow's second husband, not good.
Comb. 339.

691. *Rex v. Peck*, *M. T.* 10 *W. 3.* *Salk.* 66. — *H.* took an apprentice in husbandry according to the 5 *Eliz.* and died before the time of apprenticeship expired, leaving him impotent and a cripple. The justices at Sessions ordered the executor to keep the apprentice; but this was quashed in *B. R.* because of the great inconvenience that might follow; for it may be the executor has not assets, and lives in another county. — And *Eyre J.* said, that an apprenticeship was a personal trust between the master and servant, and determined by the death of either of them: and by the death of either of them the end and design of the apprenticeship cannot be obtained; and it may be the executor is of another trade. He admitted covenant would lie against the executor; but in that there is no inconvenience, because the executor may make his defence by pleading no assets or debts of a higher nature. — *Holt C. J.* said, that by the custom of *London* in these cases, the executor shall put the apprentice to another master of the same trade; and that in other places it would be very hard to construe the death of the master to be a discharge of the covenants: he said, it had been held that the covenant for instruction failed, but that he still continues an apprentice with the executor *quoad* maintenance. *Adjournatur*. The executor is liable in covenant if he does not instruct him, or find him another master.

Order of justices that the executor shall keep the testator's apprentice, quashed.

By custom of *London* executor shall place testator's apprentice to another master of the same trade. *Vide* 1 *Lev.* 177. 1 *Sid.* 216.

692. *Caistor v. Eccles*, *M. T.* 13 *W. 3.* *Ld. Raym.* 1683. — A poor child was bound to a master at *C.*, who assigned him to another master who lived at *E.* Judged that he gained a settlement at *E.*; for though an apprentice is not properly assignable, yet that assignment is not merely and absolutely void, but amounts to a contract between the two masters, that the child shall serve the latter; so that it is good by way of a covenant, but not as an assignment to pass his interest; like the case of assigning a bond, which, though it be not assignable in point of interest, yet it is a covenant that the assignee shall receive the money to his own use. By this agreement the apprentice served the time with the second master, and thereby gains a settlement.

The assignment of an apprentice is not absolutely void, but amounts to a contract, which is good by way of covenant. *S. C.* *Salk.* 68. 1 *Wills.* 96.

693. *Rex v. Barnes*, *E. T.* 3 *G. 1.* *Str.* 48. — *A.* is bound out by the justices to *B.*, who assigns him to *C.*, and the Sessions reciting the special matter adjudge the assignment void, and order him to be returned to *B.* — *PER CURIAM*: The Sessions had no power to judge of the validity of a deed, or to hinder a man from assigning his apprentice. The covenant to provide for him is well performed, if the person to whom he is bound out by justices assign him to another to provide for him; and apprentices bound out by two justices may be assigned as well as others. — Order quashed.

The Sessions cannot take cognizance of an assignment. *S. C.* *Foley*, 155. *Sett.* and *Rem.* 101. 2 *Str.* 1001. 1115.

694. *The Holy Trinity v. Shoreditch*, *M. T.* 3 *G. 1.* *Str.* 10. — *Parker C. J.* delivered the resolution of the Court. This is an

An apprentice may be turned

over from one master to another.

A widow, before administration granted, may assign her husband's apprentice.

(a) 1 Salk. 68. *Caistor v. Eccles*, ante, pl. 692. *Rex v. Barnes*, ante, pl. 693.

The interest of a master in his apprentice is a mere personal trust; and the indentures not being assignable in his lifetime, except by custom, and with the consent of the apprentice, the master's executors cannot maintain debt on a bond for per-

order for the removal of *P.* from the parish of *The Holy Trinity* to *S.*, by which it appears that *P.* was bound an apprentice to one *Truby*, with an intent that he should serve *Green*, which he did for three years; and it has been insisted that he being bound to *T.*, who lives in *Trinity* parish, his settlement is there, and not in *S.*, where the service was. But we are of opinion that the justices have done right in sending him to *S.*, where the service actually was. It is the same thing as if *T.* had turned him over to *G.*, in which case there could have been no doubt that he had gained a settlement in *G.*'s parish. The turning over an apprentice is like assigning a deed: in this case *T.* was only a trustee.

695. *Rex v. East Bridgeford*, T. T. 13 G. 2. Burr. S. C. 133. *A.*, the pauper, was bound apprentice by indentures to *H.*, for nine years, and served him the first four years of the term. *H.* dying intestate and insolvent, his widow (without any administration taken) assigned him over to *G.* for the remainder of the term, in consideration of 3*l.* paid her by *G.* Pursuant thereto *A.* lived with and served *G.* about a year and a half, and then *G.*, in consideration of 40*s.* paid him by *B.*, did, with the consent of *A.*, assign over the said *A.*, by verbal agreement, to the said *B.* for the remainder of the said term of nine years: and accordingly *A.* lived and served out the remainder of the term with *B.* The objection was, that the widow of the deceased master had no legal interest in his apprentice, she not having taken out any letters of administration, nor had any kind of authority to make such assignment, and consequently the second assignment of him made by her assignee is totally invalid and nugatory. Upon showing the cause, it was said, that though the widow did not take out formal letters of administration, yet she appears to have been executor *de son tort*; and executor *de son tort* may do legal acts, and an apprentice may gain a settlement under assignment, even by parole only. (a) Moreover, this apprentice must be either under the power of the executor *de son tort*, or be *sui juris*. Now if the former, the assignment is good; if the latter, then an agreement by a person *sui juris* to serve for three years and a half will bind him. — THE COURT allowed this, and observed, that though an assignment of an apprentice is not a strictly legal transaction, because the person of a man is not strictly and legally assignable, yet it has been an equitable construction, that where an apprentice has lived 40 days under an assignment, he shall thereby gain a settlement because of the consent.

696. *Baxter v. Burfield*, E. T. 20 G. 2. MSS. 2. — Debt upon bond for performance of indentures of apprenticeship: plea, condition performed: breach assigned, that the defendant being put apprentice to the plaintiff's husband, who was dead, he refused to serve his executrix. The plaintiff was alleged to carry on the same business of a mariner by herself and servants. Demurrer and rejoinder. — This having been twice argued, LEE C. J. now delivered the opinion of the Court, that the executrix could not maintain this action; for, First, It appears by words of the covenant, that it was only to serve with the master, and no mention of "executors or administrators." Secondly, From the nature of the covenant; for covenant between master and apprentice implies, that he shall only serve the master, for he is the only person he is bound to; and so it is determined in the case of *Coven-*

try v. Woodhall (a). And though it is said, that a master has an interest in his apprentice, yet it is not such a one as a person has in lands or chattels, which is transferrable, but is an interest coupled with a personal trust annexed to the person of the master, which cannot be assigned, and is gone by his death, like the case of a guardian. (b) Thirdly, Another reason why the apprentice is not bound to serve the executor is, because the covenant to instruct is personal, and dies with the master, and cannot extend to the executors, who may not be capable of instructing. (c) The interest the master has in his apprentice is a right to his service only, as appears by the case of *Hall v. Walker*. (d) Apprentices how far assignable is a single case, and certainly is not law; as appears by 1 *Salk.* 68. And there was afterwards another case in this Court of *Herns v. Drake*. (e) Debt on bond to stand to an award that an apprentice should be assigned; and the award was held bad, for an indenture of an apprenticeship is not assignable by law or equity, unless it be by custom, and then by the master during his life; and even then not without the consent of the apprentice. If, therefore, a master cannot assign during his life, because his indenture is fiduciary, it is absurd to say he shall do it by his death. There is a great difference between a covenant to maintain, and a covenant to instruct; for the first is a lien upon the executor, though not named in right of the testator's assets being come to his hands; but the other is a fiduciary trust annexed to the person of the master. (g) In *Wentworth's* "Office of Executor" it is said, that apprenticeship is gone by the death of the master, and that he is not bound to serve the heir or executor. We, therefore, are of opinion, upon the whole, that the covenant to serve is confined to *Baxter* only, as there is no mention of his executors or administrators; and that the interest in the apprentice is a mere personal trust, not assignable in the life of the master, either in law or equity, except by custom and with the consent of the apprentice; and if not assignable in his life, is not transferable to his executors; and, therefore, the plaintiff cannot maintain her action. — Judgment for defendant.

697. *Rex v. Eakring*, E. T. 26 G. 2. Burr. S. C. 320. — The pauper was bound apprentice in E., by parish indentures, till he should be 20 years of age. About three years before that time he ran away from his master, who died in June 1749. In the following year he hired himself as a servant, and served for a year at S. At Michaelmas 1750 he hired himself for another year, and served that year also at S., and received all his wages for his own use; the executors of his first master taking no notice of him. He did not attain his age of 20 years till January 1750. — WHITE moved to quash the order of Sessions, upon the authority of *Rex v. Peck* (h); in which Eyre C. J. said, that apprenticeship is a personal trust between the master and servant, and is determined by the death of either; and this case was allowed to be authority by the Court.

698. *Rex v. St. Paul's, Bedford*, M. T. 36 G. 3. 6 T. R. 452. — C. P. was bound apprentice for seven years to W. R., of K., and a fee of 15*l.* was paid to the master by the trustees of the Bedford charity. The pauper served W. R. in K. till October 1782, when they removed together to the parish of Biddenham, where the apprentice continued till the death of his master on the

formance of the covenant of the indenture, unless his executors are named.

(a) *Ante*, pl. 666.

(b) *Vaugh.* 188. 3 Keb. 519.

Apprentice not bound to serve the executors of his late master.

(c) 1 Keb. 820. 1 Sid. 216.

(d) 1 Lev.

(e) H. T. 8 Ann. not reported.

(g) *Cro. Eliz.* 553.

An apprenticeship being a personal trust, the indentures are determined by the death of either of the parties.

(h) *Ante*, pl. 691.

But an assignment by the executrix of a deceased master was held to be within the stamp act.

10th of October 1783. On the 24th of November following an agreement was entered into between S. N., the executrix of W. R., and J. R., and indorsed on the indenture, by which assigned over the apprentice to J. R. for the remainder of the term, and J. R. agreed to teach the apprentice the same trade, and to provide him with board and lodging till the end of the term. This agreement was signed by N. and J. R., but not stamped. It was contended that this case was within the exception of 23 G. 3. c. 58. § 4., which exempts from stamps "any memorandum or agreement for the hire of any labourer, artificer, manufacturer, or menial servant," and "any memorandum or agreement where the matter of memorandum or agreement does not exceed the sum of 20*l*." — LORD KENYON C. J. The exception clearly refers to cases where there is a *hiring*: but that was not the present case; "hiring" is not applicable with any propriety to the case of an apprentice. Apprentices and servants are characters perfectly distinct; the one receives instruction, the other a stipulated price for his labour. I think, therefore, that we should be doing violence to this act to determine that an apprentice comes within the terms in this clause of exception. — And the rest of the Court were of the same opinion.

VIII. Of Parish Apprentices.

See stats. 43 Eliz. c. 2. § 1. 5. 8 & 9 W. 3. c. 30. § 5. 18 G. 3. c. 47. 20 G. 3. c. 36. 32 G. 3. c. 57. § 1 to 14. 42 G. 3. c. 46. § 1, 2, 3, 5, 6, 7, 8. 44 G. 3. c. 98. 51 G. 3. c. 80. 54 G. 3. c. 107. 56 G. 3. c. 139. 1 & 2 G. 4. c. 32.

Parish children may be put apprentice to *clergymen*. See 1 Show. 78.

699. PARISH APPRENTICES may be put to *clergymen*, according to the opinion of ALL THE JUDGES, upon reference made to them, as Dalton professes to have been credibly informed; at least they are chargeable to contribute towards the putting out of apprentices.

It is in the discretion of the overseers to select such children as they shall think proper; and the justices' order is compulsory.

700. *Rex v. Crosse, T. T.* 6 W. & M. Comb. 289. — Exceptions were taken to an indictment for refusing an apprentice. First, That it is not said, that the two justices lived "in or near" the place. Secondly, That the justices have no such power. Thirdly, It is not averred that the parents were not able to maintain the child. — HOLT C. J. As to the first exception, the statute is but directory, and it has been settled that the justices have power to make such an order; and it is in the discretion of the churchwardens and overseers (as appears by the preamble 43 Eliz.) to select those children whom they shall think their parents are not able to maintain.

The person chosen as a master for a poor apprentice cannot refuse to take him.

701. *Anonymous, H. T.* 11 W. 3. Salk. 67. — The justices may force a master to take an apprentice; for a power to compel the master to receive him is consequential to the authority given to the justices by the statute to put him out; and if the master turn him away, they may make him refund.

1 Lev. 91. S. P. See *Rex v. Gillifer*, T. Ray. 65. 1 Lev. 84. S. P. *Rex v. Fairfax*, 1 Show. 76. See also *Rex v. Trevilian*, 2 Str. 1268.

702. *Minchamp's case*, T. T. 13 W. 2. Salk. 491. — He was a merchant at *Mile-end*, and two justices having bound a poor girl apprentice to him, upon his appeal the Sessions discharged the order; because they thought it unfit to compel a merchant to take an apprentice: which order of Sessions was affirmed, because the statute 8 & 9 W. 3. c. 30. having given an appeal in this case to the Sessions, it is in the discretion of the justices there to determine whether it was or was not fitting to force an apprentice upon any one.

The justices at Sessions are to judge who shall receive a parish apprentice.
1 Lev. 84.
6 Mod. 163.

703. *Rex v. Gould*, E. T. 3 Ann. 1 Salk. 381. — The defendant was indicted, because he refused to provide for a poor boy that had been put apprentice to him pursuant to the statute. — PER CURIAM: Since we allow the justices power to put out apprentices, we must allow an indictment for disobedience, either in case of not receiving, turning off, or not providing for such apprentices as the law requires.

The master is bound to provide for the parish apprentice he receives.
S. C. 6 Mod. 163.

704. *Rex v. Wagstaff*, E. T. 13 Ann. Foley, 225. — The churchwardens and overseers of the poor, by the assent of two justices of the peace, bound one J. N., a poor child of the parish, to one W., an attorney, as his apprentice, and there was an appeal to the Sessions. The Sessions ordered W. to seal the counterpart of the indenture, which he refused, and removed it by *certiorari* into the King's Bench. — Page moved to quash the order, because in the close of the indenture it is said, that the master at the end of the term shall give his apprentice two suits of clothes, one for holidays and the other for working-days. Upon debate, THE COURT held this to be ill. For the justices cannot order him wages during the term of his apprenticeship, they must only order him a maintenance as an apprentice, and cannot order him any thing after the term is ended; so that the order of Sessions must be quashed.

The justices cannot order the master of a parish apprentice to allow him wages or give him any gratuity; they can only order a maintenance.

705. *Rex v. St. Mary's in Reading*, H. T. 3 G. 1. Case of *Sett.* 77. — A poor person bound himself voluntarily as an apprentice, and no justices' hands being put to the indenture, the Sessions held that he did not gain a settlement. — PER CURIAM: The statute 43 Eliz. c. 2. only extends where a poor child is put out in a compulsory way, but here it is by consent, and therefore the statute does not extend to it. This case is likewise reported in *Foley* 154., where another objection is stated, that the indenture was void, because an infant could not bind himself; but THE COURT determined that the binding did gain him a settlement, for that an infant may make an indenture for his own benefit.

A poor infant may bind himself, and in that case an allowance of justices is not necessary.

706. *Rex v. Chalbury*, E. T. 9 G. 2. MSS. — A pauper was bound apprentice to one C., of *Chalbury*, by the churchwardens and overseers of the parish of A., until he should arrive at 23 years of age. An objection was taken to the order of the justices, because he was bound till 23, and not till 24 years of age, as the statute of 43 Eliz. c. 2. requires. — THE COURT: The words of the act mean that a parish-apprentice shall not be bound beyond the age of 24, but do not intend any necessity to have them bound until 24.

Parish apprentices may be bound for a shorter, but not for a longer time than the statutes mention.

707. *Rex v. Woolstanton*, H. T. 12 G. 2. MSS. — It was stated in an order of Sessions, that 9l. 10s. were given by a parish with the pauper, when a boy, as apprentice to a weaver; that the indenture of apprenticeship, which was not for any certain time, was signed by an overseer of the parish, but that it was not signed

The signing of the indenture by a parish apprentice is not necessary to its validity; and

he may be
bound for an
indefinite time.

by the pauper; that the pauper, who had been a cripple from his birth, was carried against his consent by his grandmother to the weaver; that the weaver had no stock nor work to employ the boy; and that after the pauper had lived with the weaver six months, the weaver ran away and left him. The question was, Whether the pauper gained a settlement by living in this manner with the weaver? And it was holden that he did. — *PER CURIAM*: The statute for putting out parish-boys apprentice, as to that part which speaks of binding them till the age of 24 years, is only directory; but if it were compulsory, the indenture would, for want of this, be only voidable. The signing of an apprenticeship-indenture by a boy bound out by the parish is not necessary. There are some circumstances in this case which seem to be fraudulent; but as it is not expressly stated in the order of Sessions that there was fraud, this Court cannot presume there was any. (a)

An indenture
binding a girl
apprentice is
not void for
want of the al-
ternative "or
till marriage,"
nor voidable
unless it be by
the parties
themselves.

708. *Rex. v. St. Petrox, T. T. 19 G. 2. Burr. S. C. 249.* — A girl aged nine years was bound apprentice by the parish until "twenty-one," absolutely, without the alternative "till time of marriage," and served near five years under this indenture in the parish of *St. P.* Her mistress then delivered up the indenture by indorsement on the back of it, and all her right and interest in the said apprentice to *P. F. of S. F.*, and the girl, being then of the age of 14 years, voluntarily bound herself by indenture to the said *P. F.* for six years or thereabouts, to learn housewifery business, and such other business as he should have to do, and to serve him after the manner of an apprentice. Under this indenture she served about six years, until she intruded into the parish of *St. P.* At the General Quarter Sessions, the indenture of 1773 was by order of the said Court vacated and made void, and the pauper was by virtue of the said order removed to *S. F.* Afterwards the Sessions vacated the order of the two justices. — *PER CURIAM*: No stress is to be laid on the circumstance of the Sessions having vacated the first indenture, because it does not appear that they have pursued the directions of 5 *Eliz. c. 4. § 5.* It is not void for want of the alternative of marriage, though perhaps not obligatory upon the parties. And though an assignment of an apprentice (except in *London* by custom) cannot in strictness be made, yet as this assignment was by assent of the mistress, the service under it will be good for the purpose of gaining a settlement; for the service continued under the first binding. Though in the *Ipswich* case (b) the indenture was holden not to be binding as between the parties, yet it was holden to be neither void nor voidable by the parish, as to the gaining a settlement under it. It would be extremely hard if a poor child who had served ten years under an indenture should lose the benefit of a settlement, because the justice's clerk was ignorant or negligent. — The order of Sessions quashed.

(b) *Rex v. the
Inhabitants of
St. Nicholas,
Ipswich, ante,
pl. 631.*

Indentures are
not cancelled
by their being
delivered up to

709. *Rex v. Austery, H. T. 31 G. 2. 2 Burr. S. C. 441.* — A parish apprentice, who was bound till he should attain the age of 24 years, was by a formal agreement between his master and

(a) I was favoured with this case, of this case, and of the opinion of the Court upon the whole of the matter before them. Note by Mr. Eott. See *Burr. S. C. 129.*

himself discharged from his apprenticeship, and the indentures delivered up. The apprentice, being then under 21 years of age, was then regularly hired by a third person in *A.*, and served for a year. — LORD MANSFIELD. Being under age, his consent was out of the case, and is exactly upon the same foot as if he had given no consent. His subsequent services, then, under the hirings stated in the order, cannot be considered as performed by the master's leave and consent, and so being a service of his master under the indenture; because this is no express leave and consent of the master to the particular service, but was intended to be quite general, and was even founded on a mistaken apprehension, that the apprentice could consent to his being discharged, which, being an infant, he could not do. — Order was quashed.

710. *Rex v. St. Luke's, T. T. 5 G. 3. 2 Burr. S. C. 542.* — *W. H.*, at 15 years of age, was bound apprentice by the parish till he should attain the age of 24. He served the first three years in *S.*, then removed with his master, one *F.*, to the parish of *St. L.*, and served there four years. His master then told him to go about his business, and work for himself. No one was present at their parting, and the indentures were not cancelled or delivered up. *W. H.* hired himself to different masters of the same trade in different parishes, and believed that *F.* did not know who he worked with, nor was he ever called upon by *F.* to account with him for the money which he earned, but applied it to his own use; nor did *F.* ever inquire after him, as far as he knew, or make any provision for him whatever. He worked and lodged the last 40 days before he attained the age of 24 years in *St. Leonard's*. The Sessions were of opinion that he did not gain a settlement in *St. Leonard's*. — LORD MANSFIELD: The indenture of apprenticeship remained in force. The service in *St. Leonard's* cannot be considered as a service to his first master, or as an assignment of him to his second master. — WILMOT. J. What had passed was a total dissolution of the apprenticeship, as to this particular purpose of gaining a settlement under the indenture. This working in *St. Leonard's* was not carrying on the business of the first master there, or serving under the original apprenticeship in the parish of *St. Leonard's*. — YATES J. He could not gain a settlement by serving under a contract which he was not *sui juris* to make; and ASTON J. concurring, the order was affirmed.

711. *Rex v. Ecclesal Bierlow, E. T. 6 G. 3. 2 Burr. S. C. 562.* — *S. W.* was bound at 16 years of age, by the parish, an apprentice to an inhabitant of the township of *E. B.*, for the term of eight years. He resided there till he had attained the age of 21, when his master and he agreed to cancel the indentures, and actually did so. Afterwards he hired himself for a year at *Warslow*, and served the whole year there. The Sessions adjudged him settled at *E. B.* In support of the order it was urged, that the apprenticeship was not *sui juris* when he entered into the contract to serve in *Warslow*, nor could he be compelled to perform it; that it has been determined that an apprentice under age cannot dissolve the indentures; and that this being a binding under the 43 *Eliz. c. 2.*, the apprentice, though above 21 at the time of the transaction, cannot cancel the indentures without the approbation of the officers of the parish. — LORD MANSFIELD: There seems to be no necessity for the parish-officers joining in the consent to discharge

an apprentice. See Lord Mansfield's observations on this case, *Rex v. Weddington, ante*, pl. 636. As to the capacity of an infant apprentice to cancel the indentures, see vol. ii.

The indentures of a parish apprentice are not determined, if they are neither cancelled or given up, although the master send the apprentice away. S. C. 1 Bl. Rep. 533. Cald. 128. See also 1 Mod. 190.

Before the 43 *Eliz.* an apprentice could not be bound for longer time than till he should attain the age of 21; and when the apprentice arrives at that age, he may cancel the indenture with the consent of his master, though without the assent of the parish-officers.

S. C. 1 Bl.
Rep. 592.
Cald. 126.

(a) See 18 G. 3.
c. 47.

the apprentice. There is no authority for it, and I see no inconvenience which can arise from the contrary practice. The act of parliament was necessary to make valid the binding of the male parish-apprentice till his age of 24; without that act he could not be bound longer than till 21. (a) But the discharge of the apprentice concerns the master and the apprentice only: the latter part of the apprentice's time is most serviceable to his master; when the apprentice, therefore, is of age, the master and he agreeing to it may dissolve the contract. — WILMOT J. agreed that the indentures may be cancelled without the consent of the parish-officers; if so, then this person was *sui juris* when he hired himself at Warslow, and gained a settlement there. — YATES J. observed, that this objection of the want of consent of the parish-officers, comes from the town of Warslow, which had nothing to do with the binding. — ASTON J. concurring in it, the order was quashed.

The indentures of a parish apprentice are not cancelled by being delivered up by the son of the person to whom he was bound. S. C. Burr. S. C. 629.

712. *Rex v. Notton*, M. T. 9 G. 3. MSS. — B. W., the pauper, when an infant, was bound apprentice by the officers of S. H. to H. C., of that place, who occupied a farm in that township, till he should attain the age of 24 years. After he had served about six years, she quitted the farm to her son, with whom the apprentice lived several years. Being desirous to leave the service he applied to his master, who told him he might go where he pleased. He thereupon left his master, and hired himself to J. W. of A. for a year, but did not continue in that or any other service for 12 months, though he was hired to several other places. He never accounted either with H. C. or her son for any wages he received in any of these service. In May 1776, C. the son delivered up the indentures to the pauper, who in February 1767, hired himself to J. B. of N., to whom he was recommended by one R. D., who afterwards told C., the son, what he had done; upon which he replied, that he thought B.'s a good place for him; in which he continued till August following. The pauper attained his age of 24 years in May 1767. The Sessions held, that he gained a settlement under this service at N. — MR. FEARNLEY cited the case of *Rex v. St. Luke's, Middlesex* (a); which THE COURT said was in point, and made the rule for quashing the order absolute.

a) *Ante*, pl. 710.

A female parish apprentice may be bound to a day-labourer to learn housewifery; and the poor children of one parish may be bound apprentices to the inhabitants of another parish. S. C. Burr. Sett. Cases, 728. See *Rex v. St. Nicholas, Nottingham, post*, pl. 719.

713. *Rex v. St. Margaret's, Lincoln*, H. T. 13 G. 3. EDITOR'S MSS. — On a special case stated by the Sessions on the appeal of the parish of St. Margaret's, the following facts appeared: E. J., a poor child belonging to the parish of St. Martin, was regularly bound apprentice by the justices and overseers of that parish to one M. J., of the parish of St. Mary in Lincoln, labourer, to learn the art and mystery of a housewife. The girl went to reside with her master, and after a service of three years was assigned over by him to one J. M., a coal-porter, of the parish of St. P., where she continued for the space of six months and upwards; when the said M. agreed with one T. M., keeper of a cold bath in the parish of St. Margaret's, to lend him the said E. J.; and she continued to abide and serve T. M. for a year and a half; but being afterwards turned out of doors, she became a pauper, and was removed from the parish of St. Mary to the parish of St. Margaret's. This order being removed into the King's

Bench, Mr. WILLIS excepted, First, That the parish-officers could only bind out a parish child to an inhabitant of their own parish; but that the binding of this poor child was to an inhabitant of *another* parish; Secondly, The person to whom she was bound in order to learn *housewifery*, was only a *day-labourer*, who assigned her, without the privity of the parish-officer, to a *coal-porter*, and he lent her to a *quack doctor*, which was sufficient evidence that the original binding was *fraudulent*, and therefore void; and he cited the case *Rex v. Austery*. (a) — Mr. SERJEANT HILL, on the other side, argued, that the child might be bound out to an inhabitant of *another* parish by the parish-officers, at their discretion, as well as to an inhabitant of their own parish, for that the superintending power given by the legislature to the justices of the peace was a sufficient check and controul upon the exercise of this discretion in the parish-officer. And as to the second objection, he contended, that as fraud had not been actually found, it could not be presumed by the Court. — LORD MANSFIELD and ASTON Js. The binding of parish apprentices is not restrained to the inhabitants of the same parish, but may be to a person residing in *another* parish. This practice is various in different places: where they confine themselves to bind only to inhabitants of the same parish, it is usual for the parishioner to whom the child is bound to assign it over immediately to the inhabitant of another parish, and therefore no inconvenience will in reality be avoided by confining it to inhabitants of the same parish. This consideration, they said, was an additional reason to satisfy their minds, that the original binding might be to an inhabitant of another parish. As to the second objection, they said, That whatever suspicion of fraud the circumstances of the case might furnish, no fraud was found, or even hinted at, and therefore they could not suppose it existed. — The order was affirmed. (a) *Ants*, pl. 709.

Fraud must be expressly found, for the Court will not presume it from circumstances.

714. *Rex v. Offerton*, T. T. 15 G. 3. EDITOR'S MSS. — J. R., when of the age of 12 years, was, by an indenture bearing date 25 April 1759, bound an apprentice by the churchwardens of M. and the overseers of H. to B. R., a linen-weaver in H., for the term of seven years, under which indenture he served five years and seven months; at which period, when he was 18 years of age, he and his master agreed, that he, upon paying his master 1s. a week, and providing for himself, should be at liberty to work for his own benefit during the remainder of the apprenticeship term; which he did accordingly, and the master received the 1s. a week as a satisfaction for his service during the remainder of the term. Immediately after this agreement the apprentice married. Neither the churchwarden nor overseers were privy to this agreement, nor were the indentures delivered up. — THE COURT OF KING'S BENCH was of opinion that the apprenticeship was not dissolved, but continued in full force notwithstanding this agreement, and that the service was under the indentures; for an apprentice may work in any place, and for any person, with the consent of his master.

An agreement between a master and a parish apprentice, that the apprentice should work when he pleased on his own account, and pay the master so much a week in satisfaction of his service is not a dissolution of the indentures. S. C. Burr. S. C. 802. Burr. S. C. 441. 416. 578. 542.

715. *Rex v. Fleet*, T. T. 17 G. 5. *Cald. Cases*, 31. — A. B., the pauper, when an infant, was bound out a parish apprentice by the churchwardens and overseers of W. to T. P. of the same place, till she should attain her age of 21 years, or day of marriage, pursuant to the statute. The original indenture was properly executed by all the parish-officers, and allowed by two justices; the coun-

If a parish apprentice be bound, it is not necessary to the validity of his indenture that the master

should sign a counterpart.

terpart was also allowed by the same justices; but neither the indenture or counterpart were executed by *P.* the master: the master nevertheless accepted the indenture and the pauper; who he considered as his apprentice till the apprenticeship expired. It was contended, that by the 8 & 9 *Will. 3. c. 30. § 5.* the master is required to execute a counterpart of the indentures, and that this requisition not being complied with, the girl had obtained no settlement by the apprenticeship. — LORD MANSFIELD: The binding was authorized by 43 *Eliz. c. 2. § 5.*, long before the act requiring a counterpart. But, though the binding was valid if the apprentice was received, it was doubtful till that statute was made, whether the persons to whom such poor children were to be bound were compellable to receive them. That statute was therefore made; and it subjects the master, upon his refusal to receive the apprentice, to a penalty; but in no other respect confines the power of binding, which was already fully established. — ASTON J. It has been so settled in the case of *Rex v. St. Peter's on the Hill (a)*, in *Chester*. — WILLES and ASHHURST J. concurred.

(a) *Ante*, pl. 646.

An infant parish apprentice and his master cannot by themselves vacate the indentures.

716. *Rex v. Langham, M. T. 22 G. 3. Cald. 126.* — *W. E.* was bound apprentice by indenture, duly executed and allowed by two justices, to *B. S.*, weaver, from the overseers of *D.* in the parish of *O.*, to serve till the age of 24 years; under which indenture he remained in such service four years and upwards, when *S.* his master failed in his circumstances, and having no longer employment for him, told him he might go to his father *J. E.*, at *O.* Upon the apprentice going home, his father and grandfather applied to one *B.*, weaver, to take him for the remainder of the term. The father of the apprentice then went to *S.*, who was at home and under confinement, and told his wife that he, the father of the apprentice, had got a new master for his son; upon which *S.*'s wife went up to her husband's chamber, and informed him that the father of the apprentice was come, and said to her that he had got a new master for his son, and desired the indenture might be given up: upon which *S.* gave the indenture to his wife, who delivered it up to the apprentice's father, *S.* having first made crosses upon the indenture, as a token that he had resigned up the indenture and the apprentice. At this time the pauper was under age. It was contended that during the infancy of a parish apprentice the indentures cannot be dissolved but under the consent of all parties concerned. (a) — LORD MANSFIELD. There is no difficulty in this case. The indenture continues in force.

See *Rex v. Harburton*, post, pl. 718.

An appeal will not lie against a parish indenture of apprenticeship after execution of the counterpart by the appellant.

A girl of eight years of age may be bound apprentice; and it is for the Sessions to judge

717. *Rex v. Saltern, E. T. 24 G. 3. EDITOR'S MSS.* — The defendant *J. S.* appealed against an indenture lately made by the churchwardens and overseers of the parish of *M.*, in the county of *D.*, and allowed pursuant to 43 *Eliz. c. 2. § 5.* by two justices; by which indenture *A. M.*, a poor girl, of about eight years of age, was bound apprentice to the said *J. S.*, for the sheaf or great tithes of the said parish. The Sessions confirmed the indenture, and stated the following case: That the appellant is, and for several years has been, an inhabitant of the parish of *M.*; but that no glebe, or house or barn, is appropriated to the said tithes, which are rated to the poor at 48*l.* a year: that the appellant had executed the counterpart of the said indenture upon tender

(a) Vide the case of *Rex v. Inhabitants of Weddington*, ante, pl. 636.

thereof: that in respect of the said tithes no apprentice had heretofore been bound; but that the custom of binding in that parish had been upon land of 10*l. per annum* and upwards; and that parol evidence was offered, but refused by the Court, to prove that at the time of the execution of the counterpart by the defendant, the indenture and counterpart were signed by one justice of the peace only, although the indenture now produced to this Court appears to be signed and allowed by two justices. The case set out the indenture, which stated the child to be put apprentice to S. "for the sheaf or great tithes of the parish of M., with "him to dwell and serve from," &c.—LAWRENCE and CLAPP showed cause. They argued first, that whatever objections there might be to this indenture, the appellant was not at liberty to avail himself of them, being concluded by executing the counterpart of the indenture. Three points, they said, would be made on the other side. First, That the child was not of sufficient age to be bound apprentice, being only eight years of age. But might not a child of eight years of age be of use in a family? If it might, this binding would be good; for the unfitness was a matter of fact to be determined on evidence, and found by the Sessions, as was held in *Minchamp's* case (a); and unfitness not being found in the present case, the Court must presume that this child was fit to be bound. The line is in some measure drawn by children going with their mothers for nurture till they are seven years of age: after that age there must be an express adjudication that they have gained no settlement of their own: they can hardly gain one otherwise than by apprenticeship. The statute of 5 *Eliz. c. 4.* requires apprentices in husbandry to be 10 years of age; but in all the other apprenticeships mentioned in that statute no age is specified. Secondly, That this binding was bad, as being contrary to the usage of the parish. But no such usage could narrow the act of parliament, which said nothing of the sort of occupation the master was to have; and no land was necessary in this case, where the child was bound as a menial servant. Thirdly, That the Sessions had rejected parol evidence of the indenture being allowed by only one justice. But this evidence was rightly rejected after the execution of the counterpart by the appellant; and besides, it was sufficient if the consent of the justices was given in any way, although not expressed on the face of the instrument. — FANSHAW and GIBBS, *contra*: As to the preliminary objection, that the defendant is concluded from disputing an indenture which he has solemnly ratified by his execution, the answer is, that until the execution of the indenture there is no *gravamen*. The statute gives the party grieved an appeal to the next Session, which must mean the Session next after the execution. (b) This objection being disposed of, they next contended that the binding was illegal and unfit; it is illegal, on account of the tender age of the apprentice: all acts *in pari materia* are to be taken together: 10 years of age is mentioned in the statute of 5 *Eliz. c. 4. § 25.* which is compulsory only on the apprentice, and now that the master is compellable to receive an apprentice, there is an additional reason for fixing a sufficient age. The statute of the 2 & 3 *Ann. c. 2.* also mentions 10 years of age: and they alluded to a case where NARES J. had held that age to be neces-

of the fitness. A custom in a parish to bind only to occupiers of a particular description is not good. S. C. Cald. 444.

(a) *Anie*, pl. 702.

(b) Vide 8 & 9 W. 3. c. 30. § 6. by which the appeal is given to the person to whom any poor child shall be appointed to be bound.

sary. (a) The binding is unfit, as being in respect of the great tithes. It ought to appear that the apprentice can be useful in that way. The usage cannot control the law, but is strong evidence of inconvenience and unfitness. As to the last objection, this is an authority given by statute, and must be strictly pursued: an allowance by one justice is not pursuing the statute; that fact can only be got at by parol evidence; and it is every day's practice to receive parol evidence of such facts; as in the case of arrest, that the bailiff's name was not in the warrant at the time of its execution by the sheriffs. — WILLES J. (b) No answer has been given to Mr. *Lawrence's* first objection. I think the appellant is concluded by having executed the counterpart, and shall not be allowed to contradict his own deed; but as there may be a doubt on this point, I will consider the objections which have been taken to the indenture. First, As to the age: no age is mentioned in the 43 *Eliz. c. 2.*, under which this binding was made, or in the 8 & 9 *Will. 3. c. 30.*, which gives the appeal, and compels the master to receive the apprentice. The statute 5 *Eliz. c. 2.* mentions 10 years of age, but that is as to apprentices in husbandry, where greater strength may be required: this is a girl bound in housewifery; and the statute of 5 *Eliz. c. 4.* cannot be connected with the 43 *Eliz. c. 2.*, which is for the sustenance of the poor. Secondly, With respect to the custom of the parish, that is stated only as evidence of unfitness, which is a matter for the discretion of the justices: the master is in sufficient circumstances, having a possession of 48*l.* a year in tithes. Thirdly, The indenture purports to be allowed by two justices; and, after the execution by the appellant, I think the Sessions did right in rejecting the parol evidence: besides, it is sufficient if the justices give their assent at any time before the Sessions. — ASHHURST J. I am of the same opinion. I think the appellant is concluded, and that the answers given to the objections would be sufficient. — BULLER J. There is one point made by Mr. *Lawrence* to which I cannot agree, as to its not being necessary for the justices to sign the indenture: the constant mode of giving their assent has been by signature, and I should be sorry to shake that practice. How is a person on whom an apprentice is imposed to know whether the justices have assented but by their signature? In every thing else I concur entirely. I think the appellant is estopped: he ought to have appealed instead of executing the indenture. But there is no ground for any of the objections. I do not know that now even in husbandry 10 years are necessary; the practice has, I believe, been to bind under the age of 10 years. It is for the Sessions to judge of the fitness. I have said on many occasions that the usage of a particular district cannot affect the construction of the statute. — Order confirmed.

Indenture of parish apprentice may be dissolved by an agreement between the master

718. *Rex v. Harburton*, H. T. 26 G. 3. EDITOR'S MSS. — J.E. was bound by the parish of H. apprentice to W. S., of the same parish, until he should be 24 years of age. He continued to live with his master till within one month of his attaining 21, when he deserted his service, and was absent seven months, and then re-

(a) But Mr. Justice Buller said, that was in a case where 10 years was required by statute: he added, that it was the usual practice for parishes to bind out after seven; which Mr. *Fanshawe* admitted.

(b) Lord Mansfield was absent.

turned to his father in *H.*, with whom he staid a few weeks. He then offered himself as a servant to *E. E.*, of *A.*, who refused to take him until he showed a receipt from his master *W. S.* for buying out his time. A receipt, expressing the sum received to be for the remainder of his time, was accordingly procured by *E.*'s father from *S.*, at the request and with the concurrence of *E.* the apprentice. The master, *S.*, offered to give up the indentures to *E.*'s father, but he did not take them, not thinking it material; and the master kept the indenture in his custody uncanceled, and delivered it up to *E.* after his time was expired. — LORD MANSFIELD: In questions respecting the continuation of apprenticeships, it would have been more convenient if the Court had never gone farther than to enquire whether the indentures were or were not cancelled, but that line has long been departed from; and it would now be inconvenient to overturn those cases where the particular circumstances have been gone into. It is a clear line to go by, that whenever the indenture is so far made an end of as to give the apprentice a remedy *at law*, it shall be considered as a dissolution of the apprenticeship; but if it were extended to every case where a court of *equity* would relieve, the enquiry would be endless. The true question, therefore, was, Whether the facts are such as put an end to the indentures at law, and could be pleaded *in bar* to an action on it? The master received 4*l.* 4*s.*; he gives a receipt for it as a consideration for the remainder of his services, and he offers to deliver up the INDENTURE: after this, if the master had brought an action on the indenture, we are of opinion, that the apprentice might have defended himself by plea of *accord and satisfaction*, or he might have maintained *trouver* for the indentures. — The indentures must be considered as no longer existing.

719. *Rex v. St. Nicholas, Nottingham, M. T.* 29 G. 3. 2 T. R. 726. — The pauper, *C. H.*, who was a poor boy settled in the parish of *St. N.* in the town of *Nottingham*, which is a county of itself, was by indenture dated the 19th December 1787, by the churchwardens and overseers of the poor of *St. N.*, by the consent of the mayor and one alderman, who were justices of the peace of the town and county of the town of *N.*, residing in the town of *N.*, in or near the said parish of *St. N.*, bound apprentice unto *J. B.*, of the parish of *B.* in the county of *N.*, framework-knitter, until 21 years of age. This indenture is under the hands and seals of the churchwardens and overseers of *St. N.*, and allowed by the said justices of the peace of the town and county of the town of *N.*, and signed by *J. B.* the master, *but is not executed by the pauper*; under which indenture the pauper served his master in *B.* five months, when he was legally discharged under the statute of 20 G. 2. c. 29., by two justices of the county of *N.*, from his apprenticeship, on account of ill treatment by the master. The boy then became a charge to *B.*, and was removed to *St. N.*, *Nottingham*, as the place of his legal settlement; and, on appeal to the Sessions, the Court confirmed the order, being of opinion that the churchwardens and overseers of the poor, with the consent of the justices of one county, cannot under the act of the 43 *Eliz.* put out a parish apprentice from one county into another county, unless the apprentice execute the indenture; but subject never-

and apprentice, after he has attained 21 years of age; and the assent of the parish-officers is not necessary to the validity of such agreement. — See *S. C.* vol. ii. tit. "Settlement by Apprenticeship."

A parish apprentice may be bound to a person residing not only in a different parish, but in a different county.

(a) *Ante*, pl. 718.

theless to the opinion of the Court of King's Bench, whether the pauper, by the service in *B.* under the said indenture, and the circumstances of this case, gained a settlement in *B.* or not. — LORD KENTON C. J. This case is of very great importance, because many poor children are bound apprentices into manufacturing counties from counties where no manufactories are established. It seems to me that the case of *St. Margaret, Lincoln* (a), has decided this; because, on reading that case, no doubt can be entertained but that the indenture was there executed by the churchwardens and overseers only, for no question could have arisen as to the legality of the binding, if the apprentice himself had executed the indenture. If this were to be determined on the words of the statute 43 *Eliz.* alone, they are extensive enough to warrant such a binding as the present; they are to bind apprentices "where the justices shall see convenient;" and whether in or out of the parish is not specified; they are not to be limited by any other rule than the propriety of the measure itself. But the great difficulty arose in my mind on another statute, namely, the 8 & 9 *W. 3. c. 30. § 5.* That statute, after reciting that doubts had arisen, whether persons to whom poor apprentices were to be bound were compellable to receive them, declares that they shall be compellable to receive them under certain penalties. Now, if this act of parliament be commensurate with that of the 43 *Eliz.*, and the one cannot be extended beyond the other, it is a powerful restriction of the former statute; for persons residing in one parish cannot be punished for not receiving apprentices bound from any other parish. But I have solved that difficulty in this way; if the master do not reject the binding, but assent to it, then there is the concurrence of all the parties necessary to give validity to the indenture; and if no objection be made to the binding before the apprentice has resided 40 days under it, he thereby gains a settlement. However, it is the wisest way to abide by former decisions, and that of *Rex v. St. Margaret, Lincoln*, has determined this point; and that decision should be the more readily adopted, because a contrary rule would be attended with infinite inconvenience to the public. The legislature, seeing that there were many poor persons who had not the benefit of a parental education, and judging very wisely and humanely that somebody should take care of them, directed (by the 43 *Eliz.*) that they should be under the management of the churchwardens and overseers of the poor, who are supposed to have the best opportunity of knowing the situation of the poor children, and required the interference of the justices of the peace as a check on the conduct of the churchwardens and overseers. So that it seems the legislature did all that human wisdom could do, by directing the magistrates, with the churchwardens and overseers, to do that for the poor children which their parents could not do for them. — ASHHURST J. However doubtful it may be, whether, under the 43 *Eliz.* the churchwardens and overseers by the consent of the justices have not a compulsory power of binding out of the parish, under the provision of the act, which says, they shall bind "where they shall see convenient:" at all events there can be no doubt but that they have the power of making such a binding with the consent of all the parties. Now here the master consented by receiving the pauper, and the assent of the pauper

may likewise be inferred from the whole of this case. It is not stated negatively that he dissented; he did not object to the binding, but lived under the indenture five months; that implies his consent; and it was only on the subsequent ill treatment of his master that he applied for a discharge: now that very application is an acknowledgment on his part that the indenture was binding. The pauper, then, having served more than 40 days under the indenture, ought to have the benefit of the service. If any objection could be supported against this binding on account of the pauper's being bound out of the county, it would be productive of great inconvenience; for many children, living in parishes where there is no manufacture, would thereby be deprived of an opportunity of being instructed in beneficial trades, and be confined to the stations of day labourers. The case of *St. Margaret, Lincoln* (a), governs this.—GROSE J. I consider that all the parties in this case consented to the binding. If the apprentice had dissented from it, he might have appealed, so might the parish into which the pauper was bound; and by not having appealed, they must be taken to have consented. Then this case falls within the determination of *St. Margaret, Lincoln*. And it would be productive of great confusion and inconvenience, if that decision should be departed from in a case like the present, and in which so many persons are concerned. I therefore consider myself as bound by that determination.—Rule absolute, and both orders quashed.

(a) *Ante*, pl. 713.

720. *Rex v. Clapp*, H. T. 29 G. 3. 3 T. R. 107. — The parish officers of S. having, with the assent of two justices for that county, apprenticed S. H., a poor child of S., to the defendant, according to the statute, he appealed to the Sessions, when the order was confirmed, subject, &c. This apprentice was bound *prout* the indenture to the appellant, who resided in the parish of P. on an estate which he rented and occupied in the parish of S., of the value of 20*l.* *per annum*, which was divided by the highway from the appellant's house in which he lived: there was no house on the estate of which the appellant was the occupier: the indenture, together with the apprentice, was tendered to the appellant in the parish of S., in the highway adjoining to the said estate lying in the parish of S. — LORD KENYON C. J. It is highly fit that this question should not remain any longer undecided. I remember a much older case than either of those mentioned at the bar, in which this question was discussed, but not decided. The question arises on the fifth section of the 43 *Eliz. c. 2*. The general purview of that statute was to make a provision for the maintenance of the poor; and the first clause, in mentioning those who have to contribute to such maintenance, describes two sorts of persons, namely, *inhabitants* and *occupiers of land*, &c. Amongst other provisions for the poor, the fifth section gives powers to the parish-officers, with the assent of two magistrates, to bind poor children apprentices *where they shall see convenient*. It is true indeed, that those words cannot be taken so generally as they purport, because they cannot compel mere strangers, who stand in no relation to the parish, to take such apprentices. But I think that context of the statute furnishes the means of circumscribing the general extent of those words; and that context I took from the first clause, which imposes other burdens of the same nature on

A person occupying land in a parish, but living out of it, is compellable to receive a parish apprentice.

occupiers of lands, &c. as well as inhabitants. The general object of the act was to compel all those who had any property in the parish to contribute their due proportion towards the maintenance of the poor; and the receiving apprentices is one mode of contributing to their general relief. In construing these words, I see no reason for confining the power of binding to the *inhabitants* of the parish; they ought to be extended to persons *occupying lands in the parish, though residing out of it*. Then it is said, that if this construction be put upon the statute, the party may be doubly charged; in the parish in which he lives in respect of his inhabitancy, in that in which he has lands, in respect of his occupation of them. But if he find himself aggrieved he may appeal to the Sessions, and we must take it for granted that the justices will do what is right. They are to adapt the charge to the size of the property which the person charged possesses; and these are incidental charges which fall on him in respect of that property. I remember it was argued in a former case on this subject, that if this construction of the statute were to prevail, some parishes would disburden themselves of many of their poor, by apprenticing out their poor children to persons living out of the parish; but the answer to any such argument is, that at the time when the 43 *Eliz.* was passed, the statute 13 & 14 *Car. 2.* was not in existence. However, the ground of my decision here is, that this is one of the modes provided for the maintenance of the poor in this statute, which imposes the duty in respect of the property. — *ASHHURST, BULLER, and GROSE Js., of the same opinion. — Order of Sessions confirmed.*

An indenture of a parish apprentice assented to by two justices separately is void.

See *Rex v. Uttoxeter*, ante, pl. 83.; and *Rex v. Justices of Dorchester*, ante, pl. 84.

721. *Rex v. Hamstall Ridware*, *T. T.* 29 *G. 3.* 3 *T. R.* 380. — *A. C.* was bound by indentures by the parish-officers of *R.* as a parish apprentice to *S. C.* The indenture was separately assented to by two justices of the peace by signing the same; but the two justices *did not assent to or sign the same at the same time*, or in the presence of each other. — *LORD KENYON C. J.* Perhaps the rule requiring the concurrence of two magistrates at the same time may be sometimes attended with inconvenience; but the rule has been long settled to be, that the concurrence of justices together is not necessary where the act to be done is merely *ministerial*; but they must confer together and form a joint opinion where the act is of a *judicial* nature. It has been held, (whether rightly so or not we are not now to enquire,) that the allowance of a poor-rate is an act merely *ministerial*, and that being once established, the consequence results, that the two magistrates need not meet when they allow the rate. The words, indeed, of the section on which this question arises, are nearly similar to those used in the first, under which the poor-rate is to be allowed: but when the nature of this case is considered, it appears to be one of the most serious subjects that fall within the decision of the justices; for they are empowered by this act of parliament to take children out of the arms of their parents, and to bind them out as apprentices till they are 21 years of age. The law has made them the guardians for those children, who have no others to take care of them, and who ought to judge of the fitness of the persons to whom the poor children are thus to be apprenticed; not the overseers, who are frequently obscure people, and perhaps in managing the business of the parish are not always

attentive to the feelings of parents. But the legislature intended that the magistrates should have a check and control over the parish-officers in this instance; and, in my mind, they are called upon to examine with the most minute and anxious attention the situations of the masters to whom the apprentices are to be bound, and to exercise their judgment solemnly and soberly before they allow or disallow the act of the parish-officers; for which purpose it is necessary that they should confer together. — ASHHURST J. The act of the justices in this case is in its nature an act of judgment; they are the guardians of the morals of the people, and ought to take care that the apprentices are not placed with masters who may corrupt their morals. The justices, therefore, should enquire particularly whether or not they ought to allow the binding by the parish-officers; and I think they would be guilty of a breach of duty, if they implicitly gave their assent without examining into the circumstances of the case. — BULLER J. It is not easily to be reconciled with any principle of common sense to say, that an act which is merely *ministerial must be done with the consent of two justices*; and I much doubt whether the persons who brought in the act (43 Eliz. c. 2.) requiring the consent of two magistrates to the allowance of a poor-rate, intended that the act of allowing it should be only ministerial; for it seems absurd to require the assent of two justices, and yet not to give them the power of withholding it if they see occasion. But the legislature has not given them authority to exercise their judgment upon that subject; and therefore this Court has said, on the construction of that statute, that their allowance of the rate is merely ministerial; but the act of assenting to the binding of parish apprentices is purely *judicial*; for on appeal the justices at the Sessions are not only to consider the propriety of binding out the apprentice, but also whether the master be bound to take him. — GROSE J. This act is peculiarly of a judicial nature, for the magistrates are appointed the guardians of those who have no other guardians; they should, therefore, exercise their judgment in this case with great deliberation. — Order of Sessions quashed.

722. *Rex v. Tunstead*, H. T. 30 G. 3. 3 T. R. 523. — The directors and guardians of the poor within the hundreds of T. and H., in the county of N., by virtue of the power given them by the 25 G. 3. c. 37., with the consent of two justices, bound a poor male child, belonging to one of the hundreds, apprentice to J. R., who is an *occupier of lands* but not an *inhabitant* within the hundreds. R. appealed to the Court of Sessions, who were of opinion that he was not bound to receive the apprentice, because he was not an *inhabitant* as well as occupier, subject, &c. By the 25 G. 3. c. 27., "The directors are empowered, with the consent of two justices for the county of N., to bind any child or children to be apprentices to any *occupier* or *occupiers* of lands or tenements, or to any person or persons using any trade in any parish, hamlet, or place within the hundreds whom they shall judge proper persons to take apprentices, &c.; and the persons to whom such children shall be bound apprentices, shall be bound to receive and provide for such apprentices, in like manner as they are now obliged by the laws in being to provide for apprentices." — LORD KENYON C. J. This case is not to be distinguished on principle from that of *Rex v. Clapp (a)*, and we see no reason to de-

In binding a parish apprentice under the stat. 20 G. 3. c. 36. it is not necessary that the master should actually reside in the parish; if he be an occupier there it is sufficient; for *inhabitant* and *occupier* are for this purpose synonymous.

(a) *Anle*, pl. 720.

part from the opinion which we gave in that case. It would require very strong words to convince me that this particular district should be governed by a different law from the generality of parishes throughout the kingdom. If, indeed, the legislature had used imperative words, we must have been bound by them; but there are none such in this statute. Here great stress has been laid on the proviso in 20 G. 3. which has the words "inhabitants" "and occupiers." Now the statute 43 Eliz. uses the word "inhabitants," which has been held not to be confined to *resiants*. (a) 2 Inst. 702. And Lord Coke (a), in his reading on the 22 Hen. 8. c. 5., relative to the repairing of bridges by the inhabitants of counties, says, that the word *inhabitants* includes those who occupy lands in the county, though they do not reside there. For some purposes, *inhabitants* and occupiers are synonymous terms. Where a person derives a benefit from property which he occupies in a parish, he is liable to contribute to the ease of it. And in *Rex v. Clapp* (b) we observed, that this was one of the modes by which he was to contribute to the ease of his parish. If, indeed, the legislature had added the words *resiants* to *inhabitants* in this act of parliament, that would have confined this burden to persons *actually residing* within the parish. — The three other judges concurring, order of Sessions quashed.

(a) 2 Inst. 702.

(b) *Ante*, pl. 720.

No parish-apprentice, male or female, can be bound for any time beyond the period of attaining twenty-one years. See *Ex parte Gill*, *ante*, pl. 685.

723. *Ex parte Davis*, T. T. 34 G. 3. 5 T. R. 715. — BAILEY moved for an *habeas corpus* to bring up this person, that she might be discharged from certain indentures of apprenticeship, entered into between herself of the one part, and Edward Whitehouse, esq. of the other part, whereby she bound herself to him as an apprentice for seven years; being therein described as of the age of 14, but, in fact, being above 17 years old at the time of the binding, and having now attained 21 and upwards, the indentures still subsisting. He grounded his application upon the principle that infants cannot be bound by indentures of apprenticeship beyond 21, but that they may dissent from them after they arrive at that age. — SHEPHERD now showed cause, insisting that the indentures were binding upon the party, although made during infancy, and could not be dissented from now she was of full age. The 5 Eliz. c. 4. expressly warrants the binding till 24; and the 42d and 43d sections enact that persons who shall be bound apprentices by indentures, according to the statute, although within the age of 21 at the time of making the indentures, "shall be bound to serve for the years in their several indentures contained, as amply and largely to every intent as if the same apprentices were of full age at the time of the making of such indentures." The act of the 18 G. 3. c. 47. restraining the binding of male children to 21, as the 43 Eliz. had before restrained it as to female children to 21 or marriage, is expressly confined to parish-apprentices, and leaves the law as to other apprentices as it stood before. The binding by indentures of apprenticeship is for the benefit of infants: and they are bound by all contracts made for their benefit in the same manner as if they had been adults at the time. — LORD KENYON C. J. It is clear that the apprentice must be discharged. Every indenture of an infant is voidable at his election: and in such cases the master must trust to the covenant of those who engage for the infant. But where the binding is under the authority of an act of parliament, that takes away the power of electing to vacate the

indentures. But I know of no act which prohibits the party in a case like the present to make such election upon her coming of age. According to the argument of the counsel against the rule, an infant who improvidently bound himself till the age of 50, or upwards, would be bound to serve till that time: but it is impossible to support such a proposition. This apprentice ought not to have been bound longer than till she was 21; and we ought now to discharge her.—The other judges concurred.

724. *Rex v. Barwick*, M. T. 37 G. 3. 7 T. R. 33. — A poor child was put out as a parish-apprentice by the overseers of the township of *H.* to *J. B.*, a surgeon and apothecary, resident in *L.* *B.* is a partner with 11 other persons in a manufactory of earthenware, in the township of *H.* Two of the parties are resident within the township, and now have, or have had, each an apprentice bound and indentured to them by the overseers of *H.*, which they took without objection. The apprentice was appointed and tendered to the appellant to be his apprentice individually. The appellant is not resident in *H.*, but at *L.*, the adjoining township. The partnership is rated for buildings and land in *H.* to the amount of 270*l.* a year, of which 23*l.* a year is the appellant's. There are several persons living in *L.* who have had apprentices from *H.* in respect of lands they individually occupy there; and there is not any person living in *L.* or *H.* who is rated for the poor of *H.* to that amount who has not had a parish-apprentice from that town. The other partners are resident at a distance, some at *M.*, some at *F.* and other places.—LORD KENYON C. J. Parish-apprentices are to be bound to masters in respect of their inhabitancy or occupation of lands within the parish. This is one of the modes pointed out by the statute 43 *Eliz.* of relieving the poor; and every person ought to bear this burden in respect of his property. Here it is stated that the appellant occupies lands in the parish to the amount of 23*l.* *per annum*, that being his aliquot part of the whole; and in respect of that occupation he is bound, according to the case of *Rex v. Clapp* (a), to take the apprentice. It has been taken for granted in the argument of this case that the appellant is not an inhabitant; but the contrary is most clear, according to the construction put on the statute 22 *Hen.* 8. c. 5. which makes the inhabitants of counties liable to the repair of bridges. Lord Coke (b), in his comment on that statute, says, that persons having lands in their own possession, though dwelling in a foreign county, are inhabitants. And that doctrine has never been doubted from that time to the present. On the authority of the case of *Rex v. Clapp* I am of opinion that this order must be affirmed.—LAWRENCE J. The argument against the order proceeds on this ground, that there was an occupation of the partnership-land and houses by two of the partners, to the exclusion of all the rest; but that is not so; for each of the others may go and reside there, if he please.

Where several persons hold land in partnership, some of whom actually reside on and occupy it, and others reside at a distance in another parish, the latter as well as the former are bound to take parish apprentices, if in other respects they are fit persons to take them.

(a) *Ante*, pl. 720.

(b) 2 *Inst.* 702.

725. *Rex v. Winwick*, H. T. 40 G. 3. 8 T. R. 454. — The pauper was settled by birth at *W.* The counsel for the parish of *W.* offered in evidence an instrument purporting to be an indenture dated the 18th of December 1789, whereby the pauper was bound an apprentice by the parish-officers of *W.* to one *T. H.*, of *S.*, until he should attain the age of 21 years; and under which the pauper resided 40 days with his master at *S.* The instrument was signed

The assent of two magistrates to a parish indenture is sufficiently signified by one of them first signing it alone and being

afterwards present when the other signs it.

(a) *Ante*, pl. 721.

An indenture binding out a poor apprentice, executed by W. S. churchwarden, and J. G. overseer of the poor of a hamlet maintaining its own poor separately from the parish at large, not being impeached by evidence negating its execution by a majority of the churchwardens and overseers of the hamlet, shall be deemed good, by intending that there were two overseers for the hamlet, as required by stat. 13 & 14 Car. 2. c. 12. § 21. and only one churchwarden, by custom, in the same place, and therefore the apprentices serv-

by the Rev. Dr. F. and the Rev. Dr. P., two of the justices for the county of N.; the same was signed by the Rev. Dr. F., at the parish of L. B., where he resides, and the Rev. Dr. P. was not then present; but a few days afterwards the Rev. Dr. F. went to the house of the Rev. Dr. P., where the same was signed by the Rev. Dr. P. in the presence of all the parties. Under these circumstances the Sessions were of opinion that the indenture was void. — LORD KENYON C. J. This case is clearly distinguishable from that of *Rex v. Hamstall Ridware* (a), because, though one of the magistrates first put his signature to this indenture at a time when the other was not present, both the magistrates afterwards met on the subject, and agreed to the propriety of the measure, when the other magistrate also executed the instrument. The principle on which this case is determined was recognised some years ago in a case of murder; a magistrate, who kept by him a number of blank warrants ready signed, on being applied to, filled up one of these, and signed and delivered it to the officer, who, on endeavouring to arrest the party, was killed; the judges were of opinion that this was murder in the person killing the officer, and he was accordingly executed. And this was not a new principle, then for the first time established; it had been always uniformly acted upon. But as the merits of this case had not been gone into at the Sessions, this case was sent down to be restated.

726. *Rex v. Hinckley*, F. T. 50 G. 3. 12 East, 361. — Removal from S. to H. Order confirmed, subject, &c. J. A., the pauper's husband, was put out as a parish apprentice by A., and served more than 40 days at H., under such indenture. The indenture run thus: This indenture witnesseth, that W. S., churchwarden of the hamlet of Atterton, and J. G., overseer of the poor of the said hamlet, by and with the consent, &c. do put and place J. A. apprentice to J. B., &c. in the common form, concluding with covenants by J. B. to the said churchwardens and overseers, and every of them, &c. and their successors, to instruct the apprentice, &c. Signed W. S. J. G. and J. B. — Consent of justices in usual form. No other evidence was produced, either on the part of the appellants or of the respondents. And the question reserved was, whether the indenture of apprenticeship were a valid instrument or not, being made and executed by one churchwarden and one overseer only. — Against the orders, after noticing that this was an indenture executed by the officers of a township, and objecting that there could be no churchwarden of a township (b), it was contended, that if the churchwardens of the parish at large were empowered to act with the overseers of each township who maintained its own poor separately, even then, as 13 & 14 Car. 2. c. 12. § 21. expressly directs two or more overseers to be appointed for every such township, and as, by the 89th cannon of 1603, there must be two churchwardens, (unless there be a custom shown to the contrary,) the indenture could not be well executed, for one churchwarden and one overseer cannot be a majority of four, and they cited *Rex v. St. Margaret, Leicester*. (c) — LORD ELLENBOROUGH C. J. No evidence having been given to impeach the validity of this indenture by showing that it was executed by less than a majority of the proper officers

(b) Vide *Rex v. Clifton*, *ante*, pl. 29.

(c) *Post*, vol. ii. pl. 726.

charged with that duty, the validity of it must be tried by itself, and if any indentment can, by law, be made to support it, we must make that indentment. Now, if there were two existing overseers at the time, and only one churchwarden, the two who executed the indenture, being a majority, would be sufficient to bind the apprentice. Then can there be, by law, only one churchwarden? That may be regulated by custom, and by custom there may be only one in this place, therefore the party who impeached the indenture should have given evidence to rebut the indentment which may be made in support of it, while unimpeached by evidence. — *LE BLANC J.* The indenture was produced on one side, and there was no evidence to impeach it on the other. The question then is, Whether by an indentment of law such an indenture can be good? And it may be good, by indentment, in the way put by my Lord. Then, not being impeached by evidence, it stands good. — The other judges concurring, orders confirmed.

727. *Rez v. All Saints, Derby, M. T. 51 G. 3. 18 East, 149.* — Removal from *L. to All Saints, Derby.* Order quashed, subject, &c. — The pauper, a poor child of *A.*, was, at the age of 13 years, with the consent of two justices, by indenture, dated the 5th of August 1806, bound by *J. E.* and *J. W.* in the said indenture denominated churchwardens and overseers of the poor of *Alboston*, to serve *M. C.* of *All Saints, of Derby*, milliner, until, &c. The indentures were duly executed by the parties, and the pauper served under them in *All Saints* for nearly four years, when she ran away and became chargeable to *L.* *E.* and *W.* had been appointed overseers of *A.* parish, on the 12th of April 1806. *W.* was, at the time of that appointment, sole churchwarden of *A.*, and acted as such till the 6th of June in that year, when *E.* was appointed, in his room, sole churchwarden of *A.*, and sworn into that office. *E.* and *W.* were the only persons filling the offices of churchwardens and overseers for *A.* at the time when the indentures were executed, and no other person had been appointed to either of those offices for any part of the year 1806. — *LORD ELLENBOROUGH C. J.* A settlement is conferred on one who serves under a compulsory binding, which the stat. 43 *Eliz.* enables to be made of poor children by the churchwardens and overseers, or the greater part of them, by the assent of two justices; but if this were not a compulsory binding under the statute, *cadet questio.* The statute begins by constituting the body to whom it entrusts the relief and management of the poor in the several respects stated; and these are the churchwardens of every parish, and four, three, or two, substantial householders there, to be nominated yearly at *Easter*, under the hands and seals of two or more justices, &c.; and these are to be called overseers of the poor: and then it proceeds to point out the duties to be executed by the body so constituted, and says that *they, or the greater part of them*, shall take order from time to time, &c. The statute, therefore, requires that there shall be overseers appointed under the hands and seals of the magistrates, distinct from the churchwardens, to execute these powers. Now here, at the time of the execution of this indenture, there were only one churchwarden and one overseer; or if there were two overseers, there was no churchwarden in the parish: the statute,

ing 40 days under it gains a settlement.

The stat. 43 *Eliz. c. 2. § 1.* requires an appointment to be made of two overseers at the least, exclusive of the existing churchwardens; and therefore the 5th section, which authorizes "the said churchwardens and overseers, or the greater part of them," to bind out poor children apprentices, is not satisfied by a compulsory binding by two persons, styling themselves churchwardens and overseers, who had been appointed the overseers at a time when one of them was churchwarden, which latter continued the sole churchwarden for about two months afterwards, when the other overseer was appointed sole churchwarden in his place.

For at all events this power is given to a body constituted of more than two persons; though it may be executed by the major part of the body when well constituted.

therefore, was not complied with, because there was no such body constituted as is thereby required for this purpose. Then there was no compulsion upon the party assumed to be bound by such compulsory act of these officers, but she was free all the time; and, consequently, no settlement could be gained by her as an apprentice bound by this indenture under the statute.—GROSS J. In order to give effect to the indenture of apprenticeship, there must have been such a binding as was compulsory, not only upon the person to be bound, but upon the person who was to take the apprentice: and here there has been no such binding. The statute of *Eliz.*, requiring that the several duties there specified should be executed by the churchwardens, and by two, at least, overseers, to be appointed by the magistrates, certainly meant that those several characters should be represented by different persons.—LE BLANC J. The settlement here depends upon a service under indentures of apprenticeship, whereby two persons, naming themselves churchwardens and overseers of the parish of *A.*, have assumed to bind out a poor child apprentice under the provision of the stat. 43 *Eliz.*: and the question is, Whether they had sufficient jurisdiction to make such binding? By that statute, which gives authority to make compulsory bindings of poor children under the circumstances there stated, such authority is to be executed by “*the said churchwardens and overseers, or the greater part of them, by the assent of two justices,*” &c. These are the officers described in the first part of the act, which directs that *the churchwardens of every parish, and four, three, or two, substantial householders* there, to be nominated under the hand and seal of two or more justices, shall take order from time to time, with the consent of the justices, for setting to work the children of all such parents who shall not, “*by the said churchwardens and overseers, or the greater part of them,*” be thought able to maintain their children. It is clear from this, that the appointment of one overseer, in addition to the churchwardens, would not be a sufficient compliance with the requisition of the statute, which looks to a greater body of persons to manage the poor in each parish, and that such body must consist of at least two overseers to act together with another description of persons, the churchwardens of the same parish, for this purpose: the statute looks to a body, therefore, consisting, at the least, of more than two persons. Now, here one of the two persons chosen to be overseers in the first instance was already churchwarden of the parish, so that, in effect, there was only one overseer chosen: and when the first churchwarden went out of office in *June*, the other overseer was chosen churchwarden in his place; therefore, there was never more than one overseer, besides the churchwarden, which is clearly bad; and the body never consisted of more than two persons; whereas the statute requires that there shall be two overseers at least, distinct from the churchwardens, and that the aggregate body should consist of at least more than two persons.—BAYLEY J. To give the pauper a settlement in this case as an apprentice, there must have been a competent compulsory binding by competent persons, as required by the statute; that is, by the churchwardens and overseers of the parish, of which latter there cannot be less than two, by the assent of two justices of the peace.

Now it has been holden (a), that if the assent of two magistrates be given separately, that will avoid the indenture, because it lessens one of the checks imposed by the legislature on this species of binding. By the same rule, then, if there be not a competent body of parish officers, by whom, or the greater part of them, consent may be given to the binding, as the statute requires, it must equally avoid the indenture. Now here, there was in effect an appointment of only one overseer; for the statute requiring that the churchwardens of the parish, and four, three, or two householders there, to be nominated by the justices, should be overseers: and that they, or the greater part of them, should execute this among other duties, must have intended an appointment of two other householders at the least to be overseers, exclusive of the churchwardens, and certainly looked to a body consisting of more than two persons. — Orders quashed.

728. *Rex v. Sheephead*, H. T. 52 G. 3. 15 East, 59. — Removal from S. to U. Order quashed, subject, &c. — The pauper was regularly indentured in 1788, as a parish apprentice, to M. R. of U., and served her there from that time for three or four years, till March 1791, when she gave up the farm to J. R. her son, who agreed to take the apprentice into his service, and keep him, and Mrs. R. was to have nothing more to do with him. This was previous to the passing of the stat. 32 G. 3. c. 57. During the time that he lived with the son Mrs. R. died, and the pauper continued some time longer with the son in U., serving him; when he told the pauper he might do what he could for himself, and if he could not get a good place, he would get one for him. The pauper then went and hired himself for 51 weeks to Mrs. P. of Field. J. R., on being informed by the pauper that he had so hired himself, asked the pauper what sort of a place it was he had got? and on the pauper's describing it as a good place, J. R. said he was glad it was a good place, and he might go thither. The pauper went into Mrs. P.'s service, staid above 40 days with her, and J. R. gave him a suit of clothes at that time. When the pauper left Mrs. P., he sent his wife to J. R. for his indentures, and they were delivered to her. The respondents contended that there was no service under the indentures, so as to gain a settlement at Field. The Sessions were of opinion that there was an express consent given by Mr. J. R. to the service of the apprentice with Mrs. P. — LORD ELLENBOROUGH asked if there were any cases since stat. 32 G. 3. c. 57.; to which it was answered, that there were none; but that the provisions of that statute did not affect the present case, inasmuch as the pauper was neither living with, nor part of, the family of Mrs. R. at the time of her death, nor of any subsequent master or mistress appointed under the act. — LORD ELLENBOROUGH C. J. The words "subsequent master or "mistress," mean such as become so by the provisions of the statute; it is the service under the authorized substitution that the act applies to. But how is the substitution by the party a substitution under the act? If it had not been for the act, I should have been with the appellants. — Order of Sessions quashed.

the 5th section seems properly

729. *Rex v. Nantwich*, M. T. 53 G. 3. 16 East, 228. — Removal from P. to the township of N. Order confirmed, subject, &c. — The parish of N. consists of five townships, of which the town-

(a) *Rex v. Hamstall Ridware, ante*, pl. 721.

A parish apprentice, not living at the time of his mistress's death with her appointee under the provisions of 32 G. 3. c. 57. though living with her son by her individual consent, cannot now gain a settlement in another parish, by serving another mistress, with the consent of the son and assignees of the original mistress, given after the death of the original mistress; the contract of service being declared, by the recital of the act, to be at an end upon the death of the original mistress, unless continued in the manner described by the 2d, 3d, and 4th sections of the act; to which sections the proviso in to apply.

Since the 13 & 14 Car. 2. c. 12. an indenture of

apprenticeship executed by the overseers of a township, which has no churchwardens or chapelwardens, and maintains its own poor separately, is a valid indenture; although neither of the churchwardens of the parish at large, within which the township is situate, join in the execution.

(a) *Ante*, pl. 29.

(b) *Post*, vol. ii. pl. 890.

ship of *N.* is one. These townships act separately in all matters relative to the management of the poor, and separate overseers are regularly appointed, two for each township. Two churchwardens are appointed for the parish at large, who have not been accustomed to interfere at all in the management of the poor, in any of the townships. There are no churchwardens or chapelwardens appointed in any of the townships. In the year 1787, the pauper then being a poor boy, and settled in the township of *N.*, was put out for seven years as an apprentice to *W.* and *T. D.*, cotton machine-workers, by an indenture duly stamped and executed by the overseers of the township of *N.*, and duly allowed by two magistrates, *but not executed by either of the churchwardens.* Under this indenture the pauper served Messrs. *D.* for seven years in *P.*, and resided there during the whole time. The question for the Court was, Whether, under the circumstances of the case, it was necessary that the churchwardens of the parish, or one of them, should have executed this indenture, to make it valid? The arguments were upon the construction to be given to stat. 43 *Eliz. c. 12.*, stat. 13 & 14 *Car. 2. c. 12.*, stat. 8 & 9 *W. 3. c. 30.*, and stat. 17 *G. 2. c. 28. § 15.*; and the cases of *Res v. Clifton (a)*, and *Spitalfields v. Bromley (b)*, were cited. — THE COURT delivered their opinions at great length, and entered very fully into the meaning of these several acts of parliament, as connected with each other; and ultimately came to the conclusion, that by the operation of the stat. 13 & 14 *Car. 2. c. 12.*, an indenture of apprenticeship, executed by the overseers of a township which has no churchwardens or chapelwardens, and maintains its own poor separately, is a valid indenture, though neither of the churchwardens of the parish at large, within which the township is situated, join in the execution; and that this operation of the stat. 13 & 14 *Car. 2. c. 12.* is not affected by any of the subsequent statutes.

An indenture stated that the overseers and churchwardens of *M.* in the county of *Warwick*, with the consent of justices of the said county, bound a pauper apprentice to *J. W.* of *H.*, in the county of *Leicester*, and the justices in their written consent in the margin described themselves as justices of the county *aforesaid*: Held, that it sufficiently appeared that they

730. *Res v. Hinckley*, *H. T. 58 G. 3. 1 B. & A. 273.* — Removal from *M.* to *H.* — Order confirmed, subject, &c. — The pauper was bound apprentice by a parish indenture, on the 3d of August 1796, which stated that *J. B.* and *E. B.*, churchwardens of the liberties of *M.*, in the county of *W.*, and *S. C.* and *J. T.*, overseers of the poor of the said liberties, *by and with the consent of the justices of the peace for the said county*, whose names were thereto subscribed, had placed *W. S.*, aged eight years or thereabouts, a poor child of the said liberties, apprentice to *J. W.*, of the parish of *H.*, in the county of *L.*, framework-knitter, with him to dwell, &c. according to the statute in that case made and provided. The indenture was duly executed by all the parties thereto, and in the margin the magistrates stated their consent, but described themselves as *justices for the county aforesaid*. The pauper served his master under this indenture in the parish of *H.* from the date of the indenture until the expiration, and during the whole of that period slept in that parish. The magistrates who signed the allowance of the indenture were magistrates for the county of *W.*, and also for the county of *L.* — LORD ELLENBOROUGH C. J. It is quite clear that the words “county aforesaid” can only refer to the county of *W.* The justices, we must presume, read the indenture before they allowed it; and indeed their very words of

reference prove that it must have been so ; then, if they did read it, they must have known that they had no authority to act, except as justices for the county of *W*. The question after all really is, Whether *said* county and county *aforesaid* mean the same thing ? If they do, it is evident from the body of the instrument that the words " said county," can only apply to the county of *W*. It will follow, that the words " county aforesaid" must have the same application. — Order of Sessions confirmed.

were justices of the county of *Warwick*.

731. *Rex v. Earl Shilton*, *H. T. 58 G. 3. 1 B. & A. 275.* — Removal from *S.* to *E. S.* — Order confirmed, subject, &c. — By indenture dated the 10th day of *June* 1799, *J. P.*, churchwarden, and *D. M.*, overseer of the poor of the parish of *C.*, with the consent of two magistrates, bound the pauper, being then about 10 years of age, apprentice to *E. G.* of *E. S.*, to serve him until the pauper attained his age of 21 years. The pauper served *E. G.* under this binding for two years, and resided in *E. S.* The appellants objected to the indenture, that it was signed by one churchwarden and one overseer only, and they then proved the registry of appointment of churchwardens for the parish of *C.*, that in the year when the above indenture was executed only one churchwarden was appointed for that parish, and it was admitted that he was the only churchwarden of the parish, the year throughout. It was further proved, that for 40 years preceding, the practice had invariably been in the above parish, to appoint only one churchwarden. The question, therefore, submitted to the consideration of the Court, is, Whether such indenture of apprenticeship, made and executed during the time when the parish had but one churchwarden, is a valid instrument or not ? — LORD ELLENBOROUGH C.J. This case has been very forcibly put by Mr. *Phillipps* upon the words of the statute 45 *Eliz. c. 2. § 5.*, and he has argued that the power of binding out poor children is only given when there are two churchwardens. Generally speaking, there are two ; but I think that the legislature used the word churchwardens here in the plural number, not as requiring that there should be two, but as speaking of the whole body of officers of that description, of whatever number that body be constituted. By custom there may be only one churchwarden in a parish, and if so, it is absolutely necessary that all the powers of the 43 *Eliz.* should be vested in him, or otherwise the act would be nullified in all those parishes in which such a custom prevailed. The act does not expressly require two churchwardens, and the inconvenience that would necessarily result from adopting that construction of the statute is sufficient to induce me to reject it altogether. — BAYLEY J. I am of the same opinion. The word churchwardens in the plural number is here used because the legislature were aware that they were generally two. It is as if they had said, " all churchwardens, " whether one or more." A custom to have only one churchwarden is valid, and such a custom must, therefore, have been abrogated by 43 *Eliz. c. 2.*, or else none of the provisions of that act could have been put in force. But there is no ground for supposing that that act of parliament had such an effect. There is no authority for saying that it is absolutely essential to have more than one churchwarden, and such a construction of the 43 *Eliz.* would be most unreasonable. — ABBOTT J. I am of opinion that this is a valid binding. A power is given by the statute to the same body of church-

The statute 43 *Eliz. c. 2.* does not require absolutely two churchwardens in every parish for the management of the poor, and therefore an indenture binding out a poor apprentice by one churchwarden, (where by custom there was but one,) and one overseer, was held to be good within the 5th section of that statute, which requires it to be executed by the greater part of the churchwardens and overseers.

wardens and overseers, not only to bind out poor children, but also to raise rates for the relief of the poor; and if this indenture were bad, every rate made by a body similarly constituted would be void also, unless the legislature should interfere. That would be so mischievous a conclusion, that it is not reasonable for the Court to adopt it. The case states, that there has been only one churchwarden in this parish for 40 years, and it is not stated that there ever were more, and it may therefore be collected from what does appear, and what does not appear, that this has been an immemorial custom; if so, there is no power now to alter it: and if the construction contended for be adopted, no rate for the relief of the poor in this parish can ever be made. I think, therefore, that where there has been by immemorial custom only one churchwarden, such churchwarden, together with the overseers, may form a body, the major part of whom may lawfully execute all the powers contained in the 43 *Eliz.* — HOLROYD J. I am of the same opinion. It appears to me that the statute 43 *Eliz.* did not mean to make any alterations in the body of churchwardens previously existing in a parish, but to add to that body the overseers, and to give to the aggregate body certain powers. If from time immemorial there has been only one churchwarden, the act gives no authority to appoint more; and if so, on the construction now contended for, nothing could be done under the act. I think the legislature meant merely by general words to give a power to the body of churchwardens at large, without considering whether that body consisted of one or more. — Order of Sessions confirmed.

The premium given by the parish-officers upon binding out of a poor apprentice need not be set out in the indenture in words at length; such an indenture being exempted from any duty by 8 Ann. c. 9. § 40., and the insertion of the premium being required for no other purpose but to ascertain the amount of the duty.

732. *Rex v. Oadby*, E. T. 58 G. 3. 1 B. & A. 477. — Removal from O. to H.; order quashed, subject, &c. — The pauper, a poor child of E., by an indenture executed by himself, his father, and J. L. his master, bound himself an apprentice to J. L. of H., for seven years. The parish officers of E. paid all the expences of the binding, and gave the master a premium of 1*l.* 1*s.* The expences and the premium were paid out of the poor rates of E. The premium is not mentioned or inserted in words at length (but is entirely omitted) in the indenture. The question is, Whether the indenture is or is not void on account of that omission? — LORD ELLENBOROUGH C. J. There is not any other statute which requires the insertion of the premium paid with the apprentice, except the act of the 8 *Anne*, the 40th section of which exempts indentures like that in this case, both from the payment of the duty and the stamp. Now, for what purpose could the insertion of the sum paid be required, except for the purpose of calculating the duty payable thereon? If, indeed, the legislature had stated in this act any other purpose than that of increasing the revenue, there would have been some foundation for the argument addressed to the Court, and there is rarely such a penury of words in acts of parliament as could induce me to think that, if they had any other object in view, the legislature would not in some corner of some clause of the act have expressed their intention. No trace, however, of any other purpose is to be found. Then, can we say, when no reason exists for which the insertion in the indenture of the sum paid with the apprentice should be required, still that such insertion is necessary, and that without it the indenture must be void? I think, therefore, that in this case the Sessions have come to a wrong conclusion, and that their order must be quashed. —

BAYLEY J. I am entirely of the same opinion. This is a revenue act, and contains no provisions except those relating to duties. It is entitled, "An act for laying certain duties upon candles, and "certain rates upon monies paid with clerks and apprentices."—Then, although the 39th section in terms requires the sum paid with the apprentice to be inserted in the indenture, yet that is only for the purpose of raising a duty thereon. When, therefore, the 40th clause exempts parish indentures from the payment of these duties, it entirely supersedes the necessity of inserting the sum paid in the indenture, and, therefore, the reason for the provision ceasing; the provision itself ceases to be necessary. I think, therefore, that this was a valid indenture, and that the Sessions were wrong in deciding against it.—**ABBOTT J.** The Court ought not, without seeing their way clearly, to hold this to be a good objection to the validity of an indenture, for it may involve questions of considerable importance, such as the freedom of a corporation, and the following of a profession. The only object of this provision in the clause was to insure the payment of the duty. Where no duty, therefore, is payable, which is the case here, that reason exists no longer, and the provision itself becomes unnecessary.—**HOLROYD J.** concurred.—Order of Sessions quashed.

738. *Rex v. St. Margaret's, Leicestershire, M. T. 59 G. 3. 2 B. & A. 200.*—Removal from St. M. to F. Order quashed, subject, &c.—The pauper had a derivative settlement in the parish of F., and was bound apprentice by a parish indenture dated 30th April 1791, to R. W. of G. W. The indenture witnessed, that A. B. and C. D., churchwardens of the parish of F., and the said A. B. and E. F., overseers of the poor of the said parish, do put and place W. B. apprentice, &c. It was duly allowed by two magistrates, but executed by A. B. and E. F. only. The pauper served a sufficient time under it to gain a settlement in W., if the indenture were valid. It was admitted, that A. B. and C. D. were the two churchwardens of F. at the time when the same A. B. and E. F. were appointed overseers of the poor, and that these persons were the officers of the parish in the year comprehending the 30th of April 1791, the day on which the indenture was executed. The question was, Whether the indenture was valid or not?—**ABBOTT C. J.** This act of parliament was a remedial act, and ought, therefore, to receive a liberal construction; and I do not think, that in holding that this case is within it, we put any forced construction upon its provisions. This case is clearly within the mischief of the act, and I think within the fair meaning of the words by which it is remedied. I am, therefore, of opinion, that the 51 G. 3. c. 80. extends not only to cases where both the parish-officers act in a double capacity, but to those also where only one of them is in that situation. The decision of the Sessions was therefore right.—**BAYLEY J.** I am of the same opinion. This act was passed almost immediately after the determination of this Court in *Rex v. All Saints, Derby.* (a) And there, one only of the officers acted in a double capacity. It was to remedy the inconvenience resulting from that decision that the act was passed. I think it is not a forced construction of it, (when it is admitted that its provisions include the case of a double defect,) to hold that they also extend to the case of a defect in one

The stat. 51 G. 3. c. 80. extends to parishes where there are three officers only, one of whom acts as churchwarden as well as overseer; and, therefore, an indenture in such a case, signed by two parish officers, one of whom acted in a double capacity, was held to be valid.

(a) *Ante*, pl. 727.

parish officer only. — HOLROYD J. concurred. — Order of Sessions confirmed.

The statute 56 G. 3. c. 189. § 1. requiring that the order of justices for the binding out of parish apprentices shall be referred to in the indenture by the date thereof, is compulsory; and therefore an indenture, in which the date of the order is omitted, is void, and no settlement is gained by serving under it.

734. *Res v. Bawbergh*, T. T. 4 G. 4. 2 B. & C. 222. — Upon an appeal against an order of justices for the removal of *W. P.* from the parish of *St. A.*, in the city of *N.*, to the parish of *B.*, in the county of *N.*, the Sessions confirmed the order, subject to the opinion of this Court, on the following case. *W. P.* was an illegitimate child, born in *Great Melton*, in *Norfolk*; and by an order of two justices, bearing date the 11th day of *May* 1819, and made under the provisions of stat. 56 G. 3. c. 189., and an indenture, not stamped, was bound an apprentice. The order of justices was set out at length; and the indenture of apprenticeship stated, that the churchwardens and overseers, by and with the consent of two justices for the county of *Norfolk*, whose names were thereunto subscribed, bound *W. P.*, a poor child, as an apprentice, for the term of seven years, &c.; but the indenture did not mention the date of the order of justices, nor did it appear whether they signed the indenture before or after the other parties. The parish-officers of *Melton* paid the master the sum of 10*l.* (which was the premium stipulated to be paid by the indenture) and the pauper entered upon his apprenticeship, and served his master at *Bawbergh* for about a year and a half; when, on his master's failure, he left him and came to *Norwich*. — *BAYLEY J.* I am of opinion that this indenture is void, and, consequently, that no settlement was gained in the parish of *B.* The statute of the 56 G. 3. c. 189. has introduced a variety of new regulations as to the mode of binding out parish apprentices. It requires that the child shall be carried before two justices, and they are to enquire into the propriety of binding such child apprentice to the person to whom it shall be proposed by the overseers to bind him; and if the justices shall, upon the enquiry, think it proper that the child shall be bound apprentice to such person, the statute then enacts that the justices shall make an order, declaring that such person is a fit person to whom the child may be bound as apprentice, and shall thereupon order that the overseer of the place to which the child shall belong shall be at liberty to bind such child apprentice accordingly; which order shall be delivered to such overseer as the warrant for binding such child as aforesaid, and such order shall be referred to by the date thereof and the names of the said justices, in the indenture of apprenticeship of such child; and after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship before the same shall be executed by any of the other parties thereto. The statute requires specifically that the order should be referred to by the date; and the object of that might be, that the order might be found with facility at any future period. The statute then requires that the justices shall sign the allowance of such indenture. Now, the word "such" is not immaterial; and the reference to the order by date is either directory only, or it is of the essence of the indenture. I am of opinion that it means such an indenture as was before required, viz. one containing the date of the order of justices. The fifth section then enacts, that no settlement shall be gained by any child who shall be bound by the officers of any parish, &c., by reason of such apprenticeship, unless such order shall be made, and such allowance of such indenture

shall be signed as thereinbefore directed. There must, therefore, be an allowance, not of such indenture, but of such indenture as was thereinbefore directed, viz. of one referring to the order of justices by the date thereof. I doubt whether the 11th section applies to such a case as the present, or whether it applies only to such cases where the binding is by the parents, and not by the overseers; but I am clearly of opinion that, construing the first and fifth sections together, this indenture is void, and that no settlement was gained in the parish of *B.* by the service under it. — **BEST J.** The first and the fifth sections are to be taken together, and then there can be no doubt that a settlement was not gained in the parish of *B.*, because in the indenture the order of the justices was not referred to by the date. Such indenture means the indenture before spoken of. — Order of Sessions quashed.

735. *Rex v. Newark-upon-Trent, T. T. 5 G. 4. 3 B. & C. 59.* — Upon appeal against an order of two justices, for the removal of *W. H.*, his wife and child, from the parish of *N.-upon-T.*, in the county of *N.*, to the township of *N. C.*, in the same county, the Sessions discharged the order of removal, subject to the opinion of this Court on the following case: The pauper, *W. H.*, a poor boy of, and then legally settled in the parish of *N. C.*, in the county of *N.*, was, on the 18th day of June 1817, pursuant to an order of two justices of that county, bound apprentice by the churchwardens and overseers of the poor of the said parish, to *E. S.*, of the parish of *N.-upon-T.*, in the county of *N.*, by indenture, for a term therein mentioned. A premium of 10*l.* was given with the apprentice to the master by the said churchwardens and overseers, although only 5*l.* was set forth in the indenture as the sum paid. The two justices who signed the aforesaid order, afterwards signed and sealed their allowance of the indenture of apprenticeship, before the same was executed by any of the other parties thereto. The parishes of *N. C.* and *N.-upon-T.*, are distant from each other about six miles, and in the same county. No notice whatever was given to the overseers of the poor of the parish of *N.-upon-T.*, or to any of them, of the intention to bind out such apprentice; nor did they, or any of them, attend before the justices who signed the order and allowed the indenture, nor was any such notice alleged or attempted to be proved to have been given, but the said justices allowed the said indenture without any such proof of service or admission of notice. *N.-upon-T.* is a borough situate in the county of *N.*, having justices who have exclusive jurisdiction therein. The pauper resided under this indenture in *N.-upon-T.* more than 40 days. This case was argued in last term by **CHITTY** in support of the order of Sessions, and **SCARLETT** and **BALGUY contra**. There being a difference of opinion on the bench, the Court delivered their judgments *seriatim*. — **BATLEY**, **HOLROYD**, and **LITTLEDALE Js.** were of opinion that the indenture was void, **ABBOTT C. J. dissent**. (In this case the reader is referred to 3 *B. & C.* p. 59. to 88. for the judgments of the learned Judges.)

notice: Held, by three justices, *Abbott C. J. dissentiente*, that by 56 *G. 8. c. 139.*, the indenture was void for want of such notice, and that the pauper did not gain any settlement by serving under it.

736. *Rex v. Lutterworth, M. T. 5 G. 4. 3 B. & C. 487.* — Upon an appeal against an order of two justices, for the removal of *M. H.*, wife of *W. H.*, a soldier, and their son *Francis*, aged six

A pauper settled in the parish of *N. C.* in the county of *Nottingham*, was, pursuant to an order of two justices of the county, bound apprentice by the churchwardens and overseers of that parish, to *A. B.* of another parish, in a borough situate in the same county, but having justices who had exclusive jurisdiction therein. The indenture was allowed by the two county justices, but no notice was given to the overseers of the poor of the parish in the borough of the intention to bind such apprentice; nor did they or any of them attend before the county justices who allowed the indenture and admit such

Where a parish has united with others for the support of the

poor, according to the provisions of the 22 G. 3. c. 83., and a guardian has been appointed, the churchwardens and overseers may, nevertheless, bind poor children apprentices, and it is not necessary that the guardian should sign the indentures.

months, from the parish of *L.* to the parish of *H.*, both in the county of *L.*; the Sessions quashed the order, subject to the opinion of this Court on the following case: *W. H.*, a poor child of the parish of *B.*, was bound apprentice by the churchwardens and overseers of that parish, with consent of two magistrates, by indenture, dated 19th January 1807, to *B. E.*, of *H.*, and he served him in *H.*, under that indenture, for the term of his apprenticeship. At the time when the pauper was bound out, the parish of *B. A.* found part of the incorporation of the house of industry at *U.* in the said county, under the provisions of the 22 G. 3. c. 83. *G. L.* was appointed guardian of the poor of *B. A.* at Easter 1803, by two magistrates. The appointment is in existence, but though *G. L.* continued to act as guardian for *B. A.* for several years afterwards, and was acting in that capacity at the time when the boy was bound out, he was not made a party to the indenture, nor can any subsequent appointment be found.—*ABBOTT C. J.* I am of opinion that the binding, stated in this case, was a valid binding, and that the pauper, by serving under it, gained a settlement in *H.* The 7th section of the 22 G. 3. c. 83., is calculated to raise a doubt on the point, for it excludes the interference of the churchwardens and overseers, in the care and management of the poor, where guardians are appointed. If there were nothing else in the act to guide us, it might be difficult to say that they could interfere in binding parish apprentices. But, in subsequent parts of that statute, various powers are expressly given to guardians of the poor, and, by the 30th section, they are authorized to provide for poor children until they arrive at a proper age to be placed out, when they are to be bound out according to the laws then existing. One of these laws was the 43 *Eliz.* c. 2., directing that parish apprentices shall be bound out by the churchwardens and overseers of the poor. And it is better that a binding should take place by several churchwardens and overseers than by a single guardian of the poor.—*BAYLEY* and *HOLROYD* Js. concurred.—Order of Sessions quashed.

IX. Of Apprentices to the Sea Service.

See stats. 5 *Eliz.* c. 5. § 12. 2 & 3 *Ann.* c. 6. § 1 to 18. 4 *Ann.* c. 19. § 16, 17. 13 G. 2. c. 17. § 2. 2 G. 3. c. 15. § 22, &c.

The indentures of a mariner's apprentice bound under the 5 *Eliz.* c. 5. must be enrolled in the next corporate town, according to the statute; and not in the *Trinity-House*, according to the charter of that company. See *Cuerden v. Leland*, ante, pl. 643.

737. *Poulson's case*, *E. T.* 6 *W. & M.* 3 *Lev.* 389. — In covenant the plaintiff declared, on the 5 *Eliz.* c. 5. § 12. that mariners may take apprentices, and that they shall be bound as apprentices in *London* are, by the custom there, the indentures being enrolled in the next town-corporate: and that King *Charles* the Second incorporated all mariners by the name of THE TRINITY COMPANY, of *Deptford Strand*, and ordained that they might take apprentices according to the statute, and that their indentures should be enrolled by THE TRINITY COMPANY, and that such enrolments should be good, notwithstanding the statute 5 *Eliz.* c. 5.; that the defendant was bound apprentice to the plaintiff, being a mariner; that the indentures were enrolled before THE TRINITY COMPANY; and that the defendant departed from his service. To this declaration the defendant demurred, because the enrolment was before THE TRINITY COMPANY, according to the charter, and not in the next TOWN-CORPORATE, according to the statute. And

THE WHOLE COURT resolved, that the King cannot by his charter alter the place of enrolment, but that it must be according to the direction of the statute; otherwise the covenant should be according to the common law, and the apprentices not bound by them: and judgment was given for the defendant.

738. *Rex v. Gainsborough, E. T. 8 G. 3. Burr. S. C. 586.*— By indenture dated the 1st day of June 1756, C. M., being then 17 years old, did, with the consent of his mother, put himself apprentice to R. B., mariner, of W. S., for four years then next ensuing, and was to receive wages increasing every year. The indenture was not enrolled in the town where the apprentice was then inhabiting, nor in the next corporate town to the habitation of the apprentice, pursuant to the statute 5 Eliz. c. 5., nor with the collector of the customs, pursuant to the 2 & 3 Ann. c. 6. He served about three years, and then left his master by consent. He served his master mostly on board at sea, but inhabited in W. S. the first 14 days, and so many days after, at many different times, as with those 14 days amounted to upwards of 40 days in the whole, and in no other parish for 40 days during his apprenticeship. The Sessions held, that he did not thereby gain a settlement in W. S. — LORD MANSFIELD. Then the justices have done wrong. It would be very hard that the apprentice should suffer for his master's neglect. I think the cases have gone too far upon the stamp act: it is *summum jus*; and has been considered strictly on account of the preservation of the duties payable to the crown. Let the rule be made absolute for quashing the order of Sessions.

The apprentice shall not be prejudiced by the neglect of the master to enroll the indentures although the stamp duties are thereby evaded.

X. Of Apprentices bound by public Charities.

See stats. 7 Jac. 1. c. 3. § 1 to 7. 8 Ann. c. 9. 44 G. 3. c. 98.

739. *Rex v. Chalbury, E. T. 9 G. 2. MSS.*— A pauper was bound an apprentice to one C. of C., by the churchwardens and overseers of the poor of the parish of A., with money belonging to A. parish, till he should arrive to 23 years of age. The orders stated further, that there were in the parish of A. two churchwardens, two overseers, and two constables. The 7 Jac. 1. c. 3. says, that the parson or vicar of every such parish where there is charity money shall, together with the constables, &c.; and the question was, Whether the binding was legal, the parson not being made a party? which it was insisted he ought to be; as in a charter where it is said the mayor with the burgesses, or the greater number of them, may do any act, there the mayor is a necessary party in the doing of the act.—But PER CURIAM: There is no necessity to construe an act of parliament with the same strictness as a charter. In the case of the mayor, the law considers him as the head-officer, and the person to hold the assembly; but in the case of the poor, the parson is not so necessary as the churchwardens or overseers.

The parson's consent not necessary to the binding upon the statute Jac. 1. c. 3.

740. *Rex v. St. Matthew, Bethnal Green, H. T. 7 G. 3. Burr. S. C. 574.*— J. F. was brought up at the charity-school of the parish of St. J., and in the year 1747 was bound apprentice by indenture to J. R., a blacksmith, for seven years; and served his whole time as apprentice under such indenture, with R., in the parish of St. B.; and at the time of his being put apprentice, the sum of 5*l.* was inserted in the indenture as paid, and was actually then paid to R., in consideration of his taking F. to be his apprentice, out of a voluntary yearly contribution or subscription of divers of the inhabitants of St. J., for the purpose of putting out

A voluntary contribution yearly of divers of the inhabitants of a parish is a PUBLIC CHARITY within the statute 8 Ann. c. 9. § 40.

boys and girls apprentices, brought up at the charity school of the parish. There are annually elected, by the contributors or subscribers, four trustees to manage the charity, and a treasurer: A number of boys and girls are every year bound out by the trustees of the charity, as apprentices; and part of the charity-money is advanced with such apprentices, by such treasurer, by the order of the trustees for the time being. *R.* received the 5*l.* mentioned in the indenture, from the trustees or treasurer of the charity. The indenture was not stamped with any stamp denoting sixpence in the pound to have been paid by the master for every pound of the five pounds so paid to *R.* The question was, Whether, as it was a charity binding, and the money being paid out of a charity, it was necessary that the indenture should be stamped? (a)—**LORD MANSFIELD** was clear that this is a public charity, and a very laudable one. It is not necessary that it should be a permanent charity. The reason of the distinction between a public and private charity is obvious: a private one might be calculated to evade the act; a public one cannot be supposed to have been so. This is a public charity within the reason and the letter of the act.—**ASTON J.** concurred.—**HEWITT J.** was also of opinion that this is clearly a public charity.

741. *Rex v. Clifton upon Dunsmore, H. T. 12G.3. Barr. S. C. 697.*—*G. H.*, when about 13 years of age, was bound apprentice by indenture, stamped with a treble sixpenny stamp, to *W. W.*, of *S.*, for seven years. The consideration-money in the indenture (being 7*l.*) received by the master, was mentioned in the indenture, to be paid by *J. B.*, of *C.*, being charity-money left by *C. B.*, widow; but the indenture was not stamped with any stamp denoting 6*d.* in the pound to have been paid by the master for every pound of the said 7*l.*, nor any apprentice-duty paid for any part thereof. *C. B.*, in her life-time, had a considerable estate in the parish of *C.*, and *J. B.* was her steward and agent over her affairs there, and was afterwards steward to her successor in the estate there. It appeared by the evidence of the attorney concerned in filling up the indenture (and who was a subscribing witness thereto), that two other poor children of the parish of *C.* were about the same time put out apprentices, and that he, the attorney, made the indentures for the placing them out. One of the two last-mentioned indentures was produced; and there was a receipt thereupon indorsed, signed by the master, for 10*l.* received as consideration-money from *J. B.*, as charity-money left by *C. B.*, widow; but no sum was mentioned in the body of that indenture as the consideration for taking the apprentice bound thereby. *B.* gave orders to the attorney for making the indentures; and at the respective times he so gave such orders, and also at the respective times he paid the consideration-monies, declared, "that the said monies were left by Mrs. *C. B.*'s will, for putting out poor children of the parish of *C.* apprentices; and that he paid the same by order of her executors; and that the whole of the money so left by her will was 70*l.*, or thereabouts; and that what remained after deducting the monies paid with such three apprentices (which was about 27*l.*), was distributed amongst the poor families in the parish of *C.*" The copy of which will was: "ITEM, To *Ludgate prison*, 100*l.*, to take out prisoners for small debts. ITEM, To *Whitechapel prison*, 30*l.*, to take out prisoners for small debts. ITEM, To the two

As to stamping indentures, vide 3 Burr. S. C. No. 48. 69. 80. 120.

(a) Vide 8 Ann. c. 9. § 39.

A bequest of money to put out children apprentices as the testatrix's brother should think fit, is a public charity within 8 Ann. c. 9. § 40.

"Compters, 20*l.* to each, to take prisoners out. ITEM, To C., 50*l.*, "to be given as my brother thinks fit; some on't to put out children "apprentices." And it also thereby appeared, that the said legacies or bequests, with several other pecuniary legacies, were by the said will charged on a *real* estate in the following manner: "All those legacies devised, to be paid out of C. lands." The Court of Sessions found that the charity in question is a PUBLIC CHARITY, and that the said 50*l.* given to C. was not paid until about eight years after the said will was proved: and on that account there was 70*l.* paid instead of 50*l.*, as the said legacy to C. The objection was, that the indentures were not valid, because they had not paid the duty on the apprentice-fee.—Mr. DUNNING moved, that, as the Sessions have expressly returned "that the "charity in question is a PUBLIC CHARITY," the case was within 8 *Ann. c. 9. § 40.* by which money given to put out apprentices, either by parishes, or by or out of any PUBLIC CHARITIES, is *not* to pay any *duty*, nor is it necessary that the indentures should be stamped.—Mr. WALLACE, *contra*, for the parish of C., argued that this was *not* a PUBLIC CHARITY, but a *private* one; because it was entirely left to the choice of the testatrix's brother, whether to put out children apprentices with the money, or *not*.—But THE COURT (exclusive of LORD MANSFIELD, who was gone) held it to be a PUBLIC CHARITY.

742. *Rez v. Quainton, H. T. 54 G. 3. 2 M. & S. 388.*—Removal from Q. to B. Order quashed, subject, &c. The pauper, a poor boy of Q., was, in 1811, with the consent and approbation of the trustees of certain funds, left upon trust for the purpose of binding out apprentices, bound apprentice to J. A., of B., for seven years, for the consideration of 20*l.*, stated in the indenture to be paid to A. by the said trustees, who were also recited to be parties to the said indenture; but it was only executed by the pauper and A. This indenture was unstamped, and it appeared that A. had actually received only 16*l.* 15*s.* 6*d.*, the residue of the 20*l.* being retained by the agent of the trustees for the costs and expences of the binding. The pauper served under the indenture at B. more than 40 days. The question for the opinion of the Court was, Whether the indenture was void on account of the trustees not having joined in the execution; or on account of the consideration-money being untruly stated therein? on which latter ground the justices at Sessions decided in the affirmative.—LORD ELLENBOROUGH C. J. Upon the first point, it appears that the money was paid out of the funds of the public charity, and was paid by the trustees in the execution of their trust, and they acted very wisely not to involve themselves by becoming parties to the covenant. As to the other point, the consideration was fully stated. Even if a stamp had been necessary, the consideration would have been sufficiently stated, for it is stated against the party's interest.—Order of Sessions quashed.

15*s.* 6*d.*, the residue being retained by the agent of the trustees for costs and binding.

An indenture binding out an apprentice, with the consent of the trustees of certain funds bequeathed for the binding out poor apprentices, which was executed by the apprentice and master, and recited the trustees to be parties, and in which the consideration paid by the trustees to the master was stated to be 20*l.*, was held to confer a settlement, though it was not executed by the trustees, and though the master actually received only 16*l.* expences of the

XI. Of Apprentices to Chimney-sweepers.

See stat. 28 G. 3. c. 48.

XII. Of Apprentices in Cotton and Woollen Mills.

See stats. 42 G. 3. c. 73. 54 G. 3. c. 170. § 9.

CHAPTER X.

OF PROVIDING FOR THE POOR IN INCORPORATED PARISHES.

See stats. 22 G. 3. c. 83. 33 G. 3. c. 35. 36 G. 3. c. 10. § 1.
 36 G. 3. c. 23. § 4. 41 G. 3. c. 9. § 1, 2, 3, 4. 42 G. 3. c. 74.
 43 G. 3. c. 100. § 1, 2. 49 G. 3. c. 120. § 5. 50 G. 3. c. 50.
 54 G. 3. c. 170. § 9.

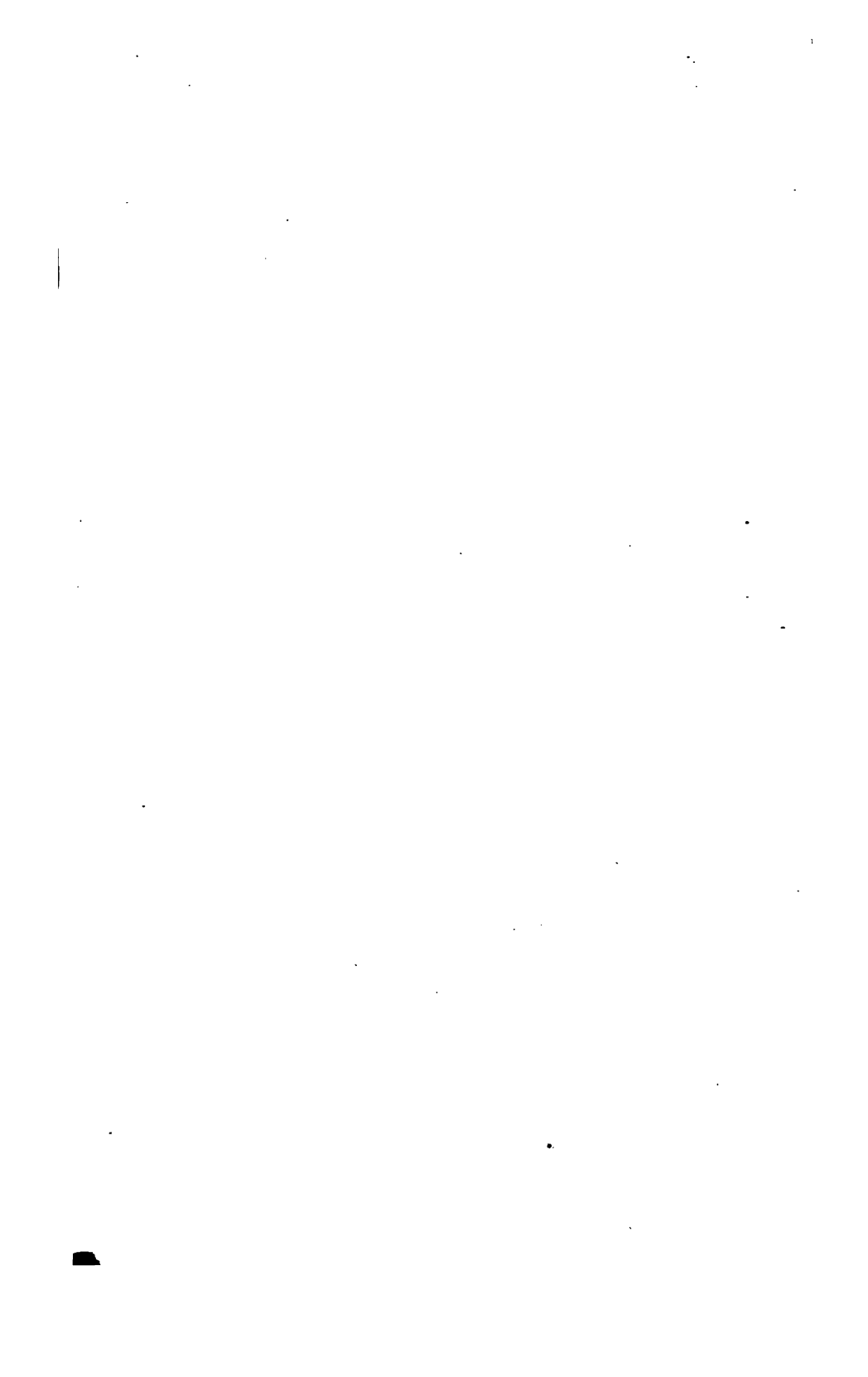
Where the guardian and visitor of a parish, which had adopted the provisions of the statute 22 G. 3. c. 83. upon application to them for relief by a pauper for herself and children, directed them to be received into the poor-house: Held, that one justice had not any jurisdiction upon complaint to him by the pauper, to order relief out of the poor-house, and therefore, where defendant was convicted in a penalty for disobeying such order, which conviction was confirmed at the Sessions, the Court quashed the order of Sessions.

748. *REX v. Laughton, H. T. 54 G. 3. 2 M. & S. 324.* — The defendant was guardian of the parish of *W.*, incorporated under stat. 22 G. 3. c. 83.; and was convicted by two justices at a special Sessions, and fined 1*l.* 10*s.* under stat. 33 G. 3. c. 55., for disobeying an order of one justice made for the relief of *M. L.* and her children, paupers of the said parish. The Quarter Sessions, on appeal, confirmed this conviction, subject, &c. The parish of *W.* is incorporated under the stat. 22 G. 3. c. 83., for the maintenance of its poor; in which parish a poor-house is erected and fitted up for the poor. On application for relief by the said *M. L.*, for herself and her two children, the guardian and the visitor appointed under the said act severally directed her to be received into the poor-house; whereupon the justice made the above order, directing a pecuniary relief out of the poor-house. The only question reserved for the opinion of the Court was, Whether the magistrate had power and authority under stat. 22 G. 3. c. 83. to make the said order for the pecuniary relief of the poor out of the poor-house? — LORD ELLENBOROUGH, C. J. The justice does not affect to determine upon the ground of its being a qualified refusal of relief. If proper relief has not been refused, the justice has not any jurisdiction. The visitor, to whom it is referred by law, as a part of his duty, to say whether the relief shall be given in or out of the poor-house, has decided that question, and has determined it to be proper relief. If it depended on the choice of the pauper, the poor-house would be useless. The visitor having adjusted it, the matter was at an end, and not within the cognizance of the magistrate; and, therefore, the infliction of this penalty was not warranted. — LE BLANC J. The 7th section of the statute, which has been relied on in argument, as putting the guardian on the footing of an overseer, must be taken with reference to the general policy of the act in which it is contained; and when the 26th section of the same act directs, that application shall be made both to the guardian and visitor, before any application is made to a justice, and when it adds that it is the duty of a visitor to adjust matters of that sort, that is, whether it is most proper to relieve in or out of the poor-house, the liability of the guardian as overseer, imposed by the 7th section, must be controlled by the subsequent clause. The visitor must always determine, whether the party is to be relieved in or out of the poor-house; otherwise the whole policy of the act

would be avoided. — BAYLEY J. The 36th section puts an end to the question. — DAMPIER J. The 36th section having declared that the visitor is the person to adjust whether it be proper to relieve the party in or out of the poor-house, and the visitor having exercised his judgment, it seems to me that the justices had not any jurisdiction. — Order of Sessions quashed.

END OF THE FIRST VOLUME.

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